

## **PUBLIC CONTRACTS REVIEW BOARD**

**Appeal Reference Number** 2214  
**Tender Reference Number** IMT013/2024  
**Tender Name** “IMT013/2024 Professional Services in connection with the Management, Supervision and works certification for works tender CT3029/2024”

The Public Contracts Review Board (hereinafter the ‘Board’ or the ‘PCRB’) convened a public hearing on the 18<sup>th</sup> February, 2026 to hear the appeal as filed by the appellant Oasis Construction Co Ltd (hereinafter the ‘Appellant’) on the 24<sup>th</sup> November, 2025, and after taking cognisance of:

The tender document for the ‘IMT013/2024 Professional Services in connection with the Management, Supervision and works certification for works tender CT3029/2024’ (hereinafter referred to as the “Tender Document”);

The minutes of the proceedings dated 18<sup>th</sup> February, 2026 which are being reproduced hereunder:

### **“PUBLIC CONTRACTS REVIEW BOARD**

#### **Case 2214 IMT013/2024 – Professional Services in connection with the Management, Supervision and works certification for works tender CT3029/2024.**

The tender was issued on the 22<sup>nd</sup> December 2024, and the closing date was 24<sup>th</sup> February 2025.

The estimated value of the tender, excluding VAT, was €1,000,000

On 24<sup>th</sup> November 2025, Oasis Construction Company Limited lodged an appeal against Infrastructure Malta – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 18<sup>th</sup> February 2026, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Dr Maria Cardona and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €5,000.00 was paid.

There were seven bids.

The attendance for this public hearing was as follows:

#### **Appellant – Oasis Construction Company Limited**

Dr Shaheryar Ghaznavi – Legal Representative  
Dr Jessica Formosa – Legal Representative

Dr Kylie Cassar Cardona — Legal Representative  
Mr Kahraman Dogan Altun – Company Representative  
Dr Jenna Ghaznavi – Legal Representative

**Contracting Authority – Infrastructure Malta**

Dr Stefan Cutajar – Legal Representative  
Dr Steve DeCesare – Legal Representative  
Ms Christine Friggieri – Head of Procurement  
Ing Christopher Farrugia – Chairperson  
Mr Glynn Borg – Secretary  
Perit Stephan Chircop – Evaluator  
Dr Joseph Vassallo – Evaluator  
Mr Adrian Camilleri – Evaluator

**Preferred Bidder – EMDP**

Dr Franco Galea – Legal Representative (online)  
Dr Louise Spiteri – Company Representative  
Perit Mariello Spiteri – Company Representative

Opening Statements

The Chairperson welcomed the parties present and formally opened Case Number 2214 in the records of the PCRB. The Chairperson identified the Appellant as Oasis Construction Company Limited the Contracting Authority as Infrastructure Malta and acknowledged the presence of representatives of the preferred bidder, EMPD.

The Chairperson invited the legal representative for the appellant to make the initial submissions.

**Initial Submissions**

Dr Thomas noted that Ing. Farrugia was present and had also been involved in the tender process. He would be testifying in accordance with the decree handed down prior to today's sitting.

Dr Ghaznavi requested that the proceedings be conducted in English, as the Appellant was a non-Maltese speaker. There were no objections, and the request was upheld.

**Initial Submissions by Dr Shaheryar Ghaznavi (for the Appellant)**

Dr Ghaznavi stated that he preferred to call the first witness. Since there was agreement between all parties, the first witness was called.

**Witness:**

**Ing. Christopher Farrugia (ID no. 479664M), summoned by Dr Ghaznavi.**

Ing. Farrugia was the project leader in tender reference IM006/2020. He was not involved in the drafting or evaluation of the present tender; however, he was the Chairman of the Evaluation Committee and had been involved in drafting another tender, IMT014/2024.

This award was granted to EMPD Ltd. and related to the second phase of a shore power project at the Malta Freeport Terminal.

Referring to tender IM006/2020, Ing. Farrugia stated that the voltage of the ship-to-shore connection varied between 6KV, 11KV, and 33KV. He was asked whether there had been any contact with the personnel responsible for certifying the evaluation.

Dr Franco Galea, for the preferred bidder, objected to this line of questioning, arguing that it was irrelevant to the appeal in question. The grievances raised by the Appellant related specifically to this tender submission and had nothing to do with the previous tender.

Dr Thomas stated that she would not prevent the Appellant from making his point, as the Board had already issued a decree regarding the scope of the witness's testimony and considered it relevant to the grievances raised.

Ing. Farrugia, referring to IM014/2020, stated that he had been in contact with experts in relation to supervision and works certification. Key Expert Three was Ing. Joseph Azzopardi, who was waiting outside to testify.

**Cross-examination by Dr Stefan Cutajar**

Ing. Farrugia confirmed that the two tenders were separate contracts with autonomous tender procedures.

In tender IM006/2020, during works carried out in the Port of Valletta, operating voltages of 6.6KV, 11KV, and 33KV were involved. That tender related to cruise liners, whereas the tender under appeal concerned container ships and roll-on roll-off vessels. Although the voltages were similar, the present tender involved voltages such as 5KV and 7KV.

The works at the Port were completed and handed over to Transport Malta in July 2024. Ing. Farrugia's involvement continues throughout the five-year liability period.

As project leader, he oversees any issues arising during the maintenance period.

**Witness:**

**Mr Glenn Borg (ID no. 266185M), summoned by Dr Ghaznavi.**

Mr Borg, Secretary to the Evaluation Board, stated that he had prior experience.

Dr Ghaznavi asked him to refer to the indication concerning Ing. Joseph Azzopardi in the evaluation report.

Mr Borg stated that the Chairman of the Committee was Ing. Christopher Farrugia.

Mr Borg's testimony was suspended, and Ing. Christopher Farrugia was recalled to the stand.

**Witness:**

**Ing. Christopher Farrugia (ID no. 479664M), summoned by Dr Ghaznavi.**

Ing. Farrugia chaired the process and had access to the submissions made by Oasis Construction.

Ing. Farrugia was aware that the bid submitted by Oasis Construction had been deemed non-compliant. The evaluators conducted their assessment based on the information submitted, and rectifications and clarifications were issued.

The Chairperson remarked that the Evaluation Committee had a shortcoming and adhered strictly to what was contained in the bid.

Ing. Farrugia stated that it was the bidder's responsibility to present its case properly. The Board members could not rely on external information to favour a particular bidder. The Board discussed whether to issue a clarification; however, regarding Key Expert Two, the bidder had made two submissions that did not comply with the specifications.

In the first bid, the project completion timeframe was overlooked. Since the project in the original submission was still ongoing, it could not be considered for the purposes of the tender. A rectification was requested, and the completion timeframe was corrected; however, the part concerning experience in specific voltage levels remained incorrect.

There was a reversal in the submissions. In the first case, the voltage issue was clearly stated and Ing. Mario Falzon was proposed. The Board then examined the second submission and the accompanying CV, which mentioned only 12KV.

A clarification could only assist the Committee in understanding something unclear. This was an incomplete submission, and the Board decided that no clarification should be issued. Ing. Farrugia acknowledged that, through experience, Oasis had the capacity for 33KV; however, the Committee's role was to assess the tender solely on the basis of the documentation submitted.

Ing. Farrugia stated that the tender required a range of voltages, including 33KV or more, whereas the bidder registered 12KV.

### **Cross-examination by Dr Stefan Cutajar**

The procurement in service tender IMT013/2024 concerned supervision and clarification of works. The awarded contractor was required to provide key experts, evaluated during the tender stage, and other experts approved during the contract phase. Their duties included approving design submissions by the works contractor, supervising and certifying works for payment, and performing management tasks such as holding meetings and reviewing reports. At the end of the project, they would certify completion and monitor performance during the five-year liability period.

Dr Cutajar emphasized that the key experts constituted the critical output expected from bidders. The witness confirmed that this was a high-voltage distribution project and that Key Expert Two was required to have experience in medium voltage, up to 33KV or more.

In the clarification note sent, the Committee did not mandate a change of Key Expert but allowed for such a change as a means of rectifying deficiencies in the submission.

In Ing. Mario Falzon's CV, voltages in accordance with the specifications, including 33KV, were listed; however, the referenced project was still ongoing. Completion was essential, as experience from an uncompleted project could not be considered sufficient.

In the second submission, Ing. Joseph Azzopardi was nominated. However, there were no references to a project involving 33KV or more, either in his CV or in the tender submission form. Only 12KV was mentioned.

The Chairperson referred to the technical tender offer for Key Expert Two, specifically the second page of the table under "Works Experience 1" and "Power Project 1." She noted a reference to IM004/2020 but no mention of voltage and asked whether this had been the Committee's concern.

Dr Ghaznavi insisted that Ing. Farrugia had initially stated that there was no reference to a 33KV project and that, when asked to repeat himself, he provided a different version. He suggested reviewing the recording.

Ing. Farrugia clarified that the Chairperson was referring to a project listed as EMPD/Infrastructure Malta/IM004/2020. He explained that the contract reference was incorrect and that the intended reference was IM014/2020, concerning supervision of contract IM006/2020.

Dr Thomas intervened, stating that the witness had indicated both an incorrect reference and the absence of voltage information.

Ing. Farrugia clarified that he had stated the voltage mentioned was 12KV. The relevant requirement was:

*“The requirement in the leading role, in the design approval, implementation or supervision commissioning of at least one high or medium voltage electrical project up to 33KV or more”.*

The response was correctly referenced to IM014; however, the voltage indicated was 12KV, whereas the requirement was 33KV.

Dr Cutajar asked the witness to confirm the table under Key Expert One and the cell indicating electrical distribution voltage in relation to Key Expert Two. In the second submission by Oasis, the voltage stated was 12KV.

Ing. Farrugia confirmed that a rectification request had already been issued concerning Key Expert Two. The Committee could not issue a second rectification for the same expert in relation to another error, as this would effectively permit the introduction of additional information. He confirmed that there was no reference to 33KV in the second submission.

#### **Re-examination by Dr Ghaznavi.**

Dr Ghaznavi asked Ing. Farrugia to confirm that IM104/2020 was related to a project which had an electrical distribution voltage of 33KV.

The witness stated that contract IM006/2020 had 33KV.

#### **Re-examination by Dr Stefan Cutajar**

Dr Cutajar confirmed with the witnesses that these were two separate tender procedures.

Dr Ghaznavi stated that he would have liked to see the evaluation report.

The Chairperson said that this was not freely accessible to the public. The findings were explained in the refusal.

Dr Ghaznavi said that the refusal consisted of one paragraph. He stated that in his appeal he was raising grievances which could result from the evaluation report. He wanted to see the discussions.

Dr Thomas said that he could ask the witnesses, and she quoted from meeting 7, technical evaluation, Oasis:

*“The bidders proposed a new key expert for KE2. Perit Joseph Azzopardi, Specific experience in a leading role could not be determined as the bidder quoted 12KV and not 33KV as requested in both the tender and rectification published. Key expert 3 compliant through Key experts CV. The Bidder deemed to be non-compliant due to Key Expert 2 (reasons above) not meeting the Tender Criteria”.*

**Witness:**

**Mr Glenn Borg (ID no. 266185M), summoned by Dr Ghaznavi.**

Mr Borg, as the secretary of the Board, stated that he was present at all the meetings. He recalled the rejection of Oasis Construction Ltd. The criteria for the key expert were split into two parts, which did not meet the requirements. The evaluators were all present to download the bids. After evaluating them, they reviewed the replies to the clarifications and rectifications. All shortcomings were discussed to ensure that they had all the necessary information.

In relation to Oasis, they discussed that the key expert did not meet the criteria. A clarification is issued only when it is unclear where certain information is available, and if the information is not provided, it cannot be clarified. A rectification cannot be requested again, and therefore the bid had to be rejected.

Dr Ghaznavi wanted to know what was discussed in relation to IM014/2020.

Mr Borg could not recall, but he said that experience could not be used for evaluation; only the documents submitted could be considered. In every procurement process, evaluators assess what is in front of them.

Dr Ghaznavi asked the witness what the evaluation criteria of this tender were.

The witness could not answer and stated that he was not a technical person.

Dr Ghaznavi told him that he had actually voted on a matter where he did not know the criteria.

Dr Thomas stated that he voiced his opinion during the discussion.

**Cross-examination by Dr Stefan Cutajar**

Dr Stefan Cutajar asked about the role of a secretary of a tender committee.

Mr Borg said that he organised and minute the meetings and communicated with the Procurement Department. He did not liaise with individual bidders, and he could not voice opinions on substantive issues regarding specific bids; however, he could direct the evaluators to remain within their procedural limits.

**Witness:**

**Architect Stefan Chircop (ID no. 432496M), summoned by Dr Ghaznavi.**

Mr Chircop was one of the evaluators. He had evaluated six other tenders related to Infrastructure Malta. He was not an evaluator in tender IM014/2020, nor in the tender for 'provision for high voltage at the Grand Harbour' in 2021.

He was in discussion with all the evaluators in relation to Oasis Construction. The ship-to-shore contract included the 33KV, which was not included in the bid submitted by Oasis.

**Cross-examination by Dr Stefan Cutajar**

Dr Stefan Cutajar agreed with the witness that 12KV was listed in the table provided. They then issued a rectification, but the new submission still contained a table listing 12KV. They searched the CV for additional information but could not find any reference to 33KV.

Another rectification could not be issued, and there was nothing to clarify as the information was not included in the submission.

**Witness:**

**Ing. Joseph Vassallo (ID no. 471767M), summoned by Dr Ghaznavi.**

Ing. Vassallo, an electrical engineer with Interconnect Malta, had evaluated several tenders. He did not evaluate tender IM104/2020, nor the ship-to-shore tender in the Grand Harbour. The present tender was a low-cost open tender with clearly listed criteria. Being an engineer, he understood why 33KV was required, as this system would be more stringent; the quality had to be higher, and the equipment required to test the system had to be different.

There was a significant difference between 12KV and 33KV, and the evaluators did not consider this to be an error. High voltage means more than 1KV, and medium voltage is normally between 1KV and 36KV under the Enemalta

standard code; however, voltage higher than 33KV is classified as high voltage. The supply voltage from Enemalta for this tender was 33KV.

#### **Cross-examination by Dr Stefan Cutajar**

The role of Ing. Vassallo was to evaluate the submitted offers. He knew that no bidders had objected to any part of the tender before the deadline for submissions. He was aware that there are international standards that may vary, as well as the wording of the law in Malta.

The legislature sought to define high voltage as voltage exceeding 33KV. He did not consider 12KV to be an erroneous or incomplete submission, as it is an acceptable voltage; however, it did not conform to the request in the tender.

A rectification had already been granted regarding the key expert; however, Ing. Mario Falzon had listed an ongoing project. A further rectification was not permitted, and there was nothing to clarify.

#### **Re-examination by Dr Ghaznavi**

The witness stated that 12KV is still high voltage.

Dr Thomas clarified that they were referring to the Maltese requirements, and the witness had said that it fell short because it did not mention 33KV. The request clearly specified 33KV, and even before hearing from the Chairman, the witness was aware of this requirement. The key expert wrote 12KV, and the witness's impression was that this expert had worked on the part of the project that required 12KV.

Dr Ghaznavi insisted that the technical offer refers to a high or medium voltage project, with the title referring to distribution, etc.

Ing. Vassallo said that the request was 33KV.

#### **Re-examination by Dr Stefan Cutajar**

Dr Cutajar agreed with the witness that during the evaluation process, when the bidders were asked to provide information, the evaluators relied solely on what was written in the prescribed form, mainly 'electrical distribution voltage 12KV'.

Dr Thomas minuted the following:

*"That the parties declared that they are in agreement, that is not contested, that Ing Joseph Azzopardi participated in the tender 014/2020 entitled, provision high voltage shore connection in the Grand Harbour as confirmed by Ing. Christopher Farrugia".*

## **Final Submission**

### **Final Submissions by Dr Shaheryar Ghaznavi (for the Appellant)**

Dr Ghaznavi stated that he would go through the grievances.

With regard to how the tender document was formulated, there is no interpretation to be made; it states, “up to and including 33KV.” In English, that establishes a parameter. The exact wording referred to a high voltage project or a medium voltage project of up to and including 33KV. What is medium voltage? All the engineers indicated from 1KV up to 33KV, and it included 33KV. From the evidence we heard, what they wanted was not “up to,” but an individual with 33KV experience.

Therefore, my **first grievance** concerns the wording as interpreted by us and by the ordinary individual who speaks English. “Up to 33KV” starts from 1KV to 33.9KV; once you go to 34KV, it becomes high voltage. What would the ordinary person understand by that phrase? What they wanted was 33KV. As written, it indicates the parameters of medium voltage, as reflected in the respondents’ reply in paragraph 3.4:

*“Leading role in the design or design approval, implementation or supervision, and commissioning of at least one high or medium voltage electrical project up to and including 33KV or more electrical distribution system with value of the electrical component”.*

Dr Ghaznavi stated that once you read this, you will understand.

**Second grievance** – If they were so certain that the reply to the clarification required a rectification, that is the strongest argument I can make. Why? Because they realised that the 12KV was a clerical error. One wonders what would have happened had they left out the 12KV entirely. Let us not forget what the adjudicating element of this tender was: the best price. They knew there was a technical error. Why did they not ask for clarification? Ing. Christopher Farrugia indicated 12KV, but this project was 33KV.

Dr Ghaznavi mentioned a case from England and Wales (2025) and another judgment from Antwerp, quoting:

*“The need for healthy and fair competition and to permit proper evaluation of tenderers, this requires common sense when applying the rules to achieve those ends. Experienced evaluators working for CA should know when a response to a request for a clarification is a simple adjustment of the kind they generally be expected and when it is an attempt to have another go, when the rectification alters the offer then it should not be permitted. The latter is a new bid or a substantial change to the original bid. What is to be avoided is a strict over literal*

*approach which may lead to exclusion of the best tender for no objectively justified reason”.*

You have to use a degree of common sense. When there is an error that you yourself know to be clerical, you may ask for rectification. Before requesting it, does it change the substance of the offer? Is the tenderer having another attempt? No. He indicated the project by name. We have a title, but there is an error: instead of 33KV, it states 12KV. Would that have changed the substance? I contend it would not. A degree of common sense was required.

**Third grievance** – I am glad they realised they had the opportunity to request clarification. If they requested clarification, it would require rectification, and they knew there was an error. Rectification that does not change the offer should be allowed. Do we have the same issue? Did we replace an individual? These are not the same issues. One concerned a completed project, the other concerned voltage. The sole criterion was the cheapest price. Was he technically qualified? No one can say he was not. He was technically qualified. This could have been tendered by foreigners, so identification was of essence to IM when the title was an IM project.

**Fourth grievance** – The principle of proportionality, especially when it is a lapsus calami. My colleagues referred to various judgments, and the witnesses we heard today, in their wide experience, also seemed to have judgments in mind. The principle of proportionality must be respected. He mentioned the Slovensko judgment:

*“For exceptional situations where it is clear that the tenderer requires a mere clarification or correction of obvious material errors as such amendment does not lead to the practice lead in practice to the submission of a new tender, such amendment should be allowed”.*

There is also the judgment of Tideland Signal Limited, which states:

*“Rejection of tenderer failure to exercise power to seek clarification, for annulment expedite to procedure. The law of principle of good administration imposes an obligation to exercise that power in circumstances where it is both practically possible and necessary to obtain clarification”.*

He then mentioned the Antwerp judgment:

*“The ambiguity probably as a simple explanation is capable of easily resolved. In principle it would be contradict to the principle of sound administration for the commission to reject the tender at such circumstances its power to seek clarification. It will be contrary to the principle of equal treatment to accept that in such circumstances the commission enjoys unfettered discretion”.*

Dr Ghaznavi then quoted from Court of Appeal *Ballut Blocks vs Ministru ghar- rizersi*, where the Court stated:

*“Id-decizzjoni li ma tintgħazilx l-orhos offerta minhabb semplice lapsus calami li effettivament ma kien ta ebda relevanza billi l-prezz ta l-offerta xorta wahda kien mgharuf u vinkulat kienet id-decizzjoni”.*

The Court further stated:

*“Fil-fehma tal-qorti, għalhekk, mhux biss l-iskwalifika ma kinitx meħtieġa biex jinkisbu l-għanijiet tas-sejha għal offerti, fosthom il-ħarsien tal-kompetizzjoni ġusta, iżda anzi wasslet biex jista’ jintilef il-għan li l-kuntratt. l-iskwalifika tal-offerta ta’ Ballut ma kinitx miżura proporzjonata. Għamel sew il-kumitat ta l- evalwazzjoni li sewwa dak l-izball u għamel hazin il-bord tar-revizzjoni li sab li l-offerta tal-Ballut ma kienitx tiswa”.*

The evaluation committee realised there was a shortcoming in the tender and acknowledged it was a lapsus calami; they awarded the contract. The entity that did not receive the award appealed. The PCRB accepted the appeal; the Court of Appeal rejected it.

This appeal should be accepted. Everyone acknowledged it was a lapsus calami, but they were too rigid. The corresponding KV was incorrect; correcting that KV does not amount to a fresh bid.

#### **Final Submissions by Dr Stefan Cutajar (for the Contracting Authority)**

Dr Stefan Cutajar stated that what is undisputed is the factual sequence of events. Even through the oral testimony, we saw that Oasis first nominated Ing. Mario Falzon. The rectification concerned deficiencies relating to Key Expert 2. Once rectification was issued, that procedurally limited the discretion of the Evaluation Committee with respect to any further rectifications. Any further requests regarding Key Expert 2 would have created a situation where someone else might have objected. Under Regulation 62, this would have been contrary to Procurement Rules.

The second issue concerned what was submitted with Key Expert 2, Ing. Joseph Azzopardi. We saw unanimously that the prescribed form indicated 12KV. The Port of Valletta could have dealt with 33KV, but the requirement included up to 33KV or more. What the Contracting Authority had in mind was switchboards and similar systems that could cover the whole spectrum, meaning high voltage. What they needed to see in the Key Expert was at least compliance with the 33KV mark.

The other side argues that this was a lapsus calami. However, the Evaluation Committee could not address clerical errors as they fall within the realm of

rectifications. I refer to Public Procurement Note 40 issued by the DOC. On pages 5, 6, and 7, there is a detailed explanation of the difference between clarification and rectification. I invite the Board to review this note as to why clarification was not available at this stage.

The principle of self-limitation has already been addressed by this Board. I refer to Court judgment number 35/2022/1, which also involved Infrastructure Malta:

*“Jekk oblatur ikun ingħata opportunita ta’ rettifika imma xorta waħda jibqa’ amministrativament non-compliant, il-bord ta’ evalwazzjoni ma jistax isalva dik l-offerta billi joqgħod jġri wara dak l-oblatur sakemm dan, forsi, jirregola l-pożizzjoni tiegħu. F’dan il-każ, il-konsorzju appellat ingħata kull ċans jissottometti ruħu għat-talbiet tal-awtorita kontraenti, u imputet sibi jekk baqa’ jitraskura dak li kellu jagħmel. L-eċċess fil-manjamina u fit-tfittix sabiex jiġu salvati offerti akkost ta’ kollox mhux espressjoni ta’ proporzjonalita imma huwa sproporzjon kontra min kien “compliant” mill bidu nett. Din il-Qorti mhux l-ewwel darba li tirribadixxi li kull oblatur irid, sa mill-bidu nett mal-offerta tiegħu, isegwi rigorożimament dak li trid issejha għall-offerti u m’għandux jippretendi li jiġi mitlub “jirrangà” l-offerta biex ikun kompatibbli ma’ dak mitlub”.*

Dr Cutajar pointed out that this principle of limitation was adhered to by the Committee. Anything beyond what was done could have led to discrimination against other bidders.

He did not address each grievance in detail but emphasised the language used throughout the tender, particularly the requirement of 33KV or more experience for the Key Expert. The Evaluation Committee, whether voting or not, cannot rely on external knowledge when evaluating bids, but only on what is submitted.

It would constitute a breach of the principle of equal treatment in procurement law and would be impossible to justify in audits or revisions. Grievance 3 was addressed by reference to PPN 40.

#### **Final Submissions by Dr Steve DeCesare (for the Contracting Authority)**

Dr Steve DeCesare disagreed that the text should be interpreted by the ordinary person. The correct standard is that of a reasonable, prudent, and diligent tenderer. Any tenderer would be aware that such systems operate at different voltages, with 33KV being one of them. The document should not be interpreted by a layperson but by someone who understands this type of contract.

#### **Final Submissions by Dr Franco Galea (for the Recommended Bidder)**

Dr Franco Galea fully adopted the submissions made by Infrastructure Malta. He stated that he heard many conjectures about what people ought to have known or could have known, including references to other tenders. The argument seemed to be that they knew who this person was, that he was experienced, and therefore he should not have been disqualified.

The appellant had to decide which position to take. At one stage, they argued that 33KV was not necessary; at another, they argued that it was a clerical error. The bottom line remains that 33KV experience was required. The appellant was asked to rectify and made another mistake in the rectification. His clients were compliant from the beginning, and to allow another rectification would be unjust.

### **Conclusion of the Hearing**

The Chairperson thanked the parties for their submissions and informed them that they would receive the Board's decision in due course."

The written pleadings as filed by Oasis Construction Co Ltd on the 24<sup>th</sup> November, 2025, together with proof of payment of a deposit in the amount of €5,000, wherein it held as follows:

*"Dear Chairman,*

*We write for and on behalf of Oasis Construction Co Ltd (TID 222721) (hereinafter referred to as the "Appellant"), in connection with the above-mentioned Tender Procedure, with specific reference to the letter issued by Infrastructure Malta (hereinafter referred to as the "Contracting Authority") dated 13th of November 2025 attached herewith and marked as "Doc. OC 1" (hereinafter referred to as the "Letter") where the Appellant was informed that "This tender is being recommended for award to EMDP at the price of of Euro 757,777.57 excluding VAT"*

*The Appellant has paid the deposit of five thousand Euros (€5,000) in accordance with the instructions of the Contracting Authority. Proof of payment is herewith attached and marked as "Doc. OC 2".*

### **FACTS OF THE CASE**

*By means of a Tender published by the Contracting Authority on the 22nd of December 2024, interested parties were invited to participate in the tender for the provision of "Professional Services in Connection with the management, Supervision and Works Certification for Works Tender CT3029/2024".*

*The Appellant duly submitted its offer in accordance with the terms of the Tender.*

*By means of a letter dated 13th of November 2025 (a copy of which letter is herewith attached and marked as Doc. OC 1), the Appellant was informed that "This tender is being recommended for award to EMDP at the price of of Euro 757,777.57 excluding VAT".*

Whereas the Appellant felt aggrieved by this decision and consequently is humbly presenting this appeal.

### **SUMMARY OF THE APPELLANT'S ARGUMENTS**

The Appellant's submission in this appeal is based on three grievances, which grievances challenge and put in question the award made by the Contracting Authority in relation to the Tender.

The Appellant's grievances are based on the following aspects, which materially breach the principles of Procurement Principles and Practices:

1. The interpretation of the technical requirements set out in the Tender Document, by the Evaluation Committee, was illogical, irrational and senseless.
2. The experience of the Key Expert in question includes projects of a similar nature with the same Contracting Authority.
3. The Evaluation Committee failed to utilise the tools at its disposal to clarify any doubts that may have arisen.

Whereas the grievances of the Appellant are clear and manifest and consist of the following:

### **GROUND FOR APPEAL**

1. First Grievance: The interpretation of the technical requirements set out in the Tender Document, by the Evaluation Committee, was illogical, irrational and senseless.

1.1 Whereas as it emerges from the Extract of the Evaluation Report attached to Doc. OC1, the principal and sole reason as to why the Appellant's offer was not accepted was because, allegedly, the bid was technically non-compliant;

1.2 Whereas in reaching its decision, the Evaluation Committee considered that with regards to "Key Expert 2, Warranted Electrical Engineer", the Appellant's Tenderer's Technical Offer did not satisfy the technical requirements set out by the Contracting Authority;

1.3 Whereas one of the requirements set out in the Tender with regards to "Key Expert 2", required that said expert to have experience in:

*"Leading role in the design or design approval, implementation or supervision, and commissioning of at least one high or medium voltage electrical project up to and including 33kV or more electrical distribution system with value of the electrical component of the project equal to or in excess of €2,000,000 completed within the period Jan-2015 - Dec-2024."*

1.3 Whereas the logical interpretation of the above requirement is that it should be understood and interpreted in the following manner:

- i. The Key Expert should have had a "Leading role in the design or design approval, implementation or supervision, and commissioning of at least one high or medium voltage electrical project"; and

- ii. *The Electrical Project should have had an electrical distribution system of "up to and including 33kV or more"; and*
- iii. *The Electrical Project should have been "with value of the electrical component of the project equal to or in excess of €2,000,000"; and*
- iv. *The Project should have been "completed within the period Jan-2015 - Dec2024".*

*1.4 Whereas in the present case, evidently, the bone of contention is in respect of the second element as set out in 1.3 (ii) hereabove, namely that:*

*(ii) The Electrical Project should have had electrical distribution system of "up to and including 33kV or more electrical distribution system";*

*1.5 Whereas, from an analysis of the recommendation made by the Evaluation Committee, it can be inferred that the Committee interpreted the above-quoted requisite as requiring that the Project must have included a 33kV or higher electrical distribution system;*

*1.6 Whereas in the Appellant's humble opinion, this interpretation is not only illogical but also irrational and does not reflect the actual wording as set out in the Tender document;*

*1.7 Whereas when the Contracting Authority decided to use the phrase "up to and including", it opted to establish a parameter, this parameter is one that starts at 1 and keeps going to 33, that is the sole linguistic meaning that can be attributed to this phrase in the English language. Therefore, the indication of 12 kV, as the electrical distribution voltage, does actually meet the requirements as set out by the Contracting Authority. It is this interpretation which is the linguistically and logically correct interpretation that should be given to the said requirement;*

*1.8 Whereas, at this stage, the Appellant points out that one has to refer to and apply the basic principles of Electrical Engineering, to thereby analyse what is deemed to constitute a High Voltage Electrical Project and what is deemed to constitute a Medium Voltage Electrical Project;*

*1.9. Whereas it is a well-established principle in the industry that a Medium Voltage Electrical Project from a national electrical perspective is considered to be one which typically operates within the 1 kV to 36 kV range;*

*1.10 Whereas in fact, according to IEEE SA' guidelines and IEC2 standards:*

*"Medium Voltage Electrical Project typically covers 1 kV-36 kV in most industrial and commercial contexts. It forms the crucial bridge between low-voltage utilization (homes, small commercial loads) and high-voltage transmission (long-distance, bulk power)."*

*1.11 Whereas consequently, it can be stated that electrical projects which involve electrical distribution systems of over 36 kV are deemed to be High Voltage Electrical Projects, in terms of the IEEE SA guidelines and IEC standards;*

*1.12 Whereas in view of the above, it is blatantly clear that the Evaluation Committee was erroneous on two aspects: (a) their failure to recognise and distinguish the difference between High Voltage Electrical Projects and Medium Electrical Projects, and (b) the illogical interpretation given to the phrase "up to and including";*

1.13 Whereas when the qualifying element makes reference to "...at least one high OR medium voltage electrical project...." the Evaluation Committee should have identified the parameter set therein in order to evaluate whether the relevant Key Expert falls within the said parameter;

1.14 Whereas in the submission by the Appellant, it was indicated that Key Expert 2, Warranted Electrical Engineer, possessed experience in a project organised by the Contracting Authority, namely "Professional Services in connection with the Supervision and Works Certification for Works Tender IM006/2020 Tender for the Provision of a High Voltage Shore Connection (HVSC) System in the Port of Valletta, Grand Harbour, Malta" which project was completed in December 2023; however the Appellant indicated, "erroneously" that the electrical distribution voltage of this project was 12kV; when in actual fact the said project had a electrical distribution voltage of 33kV;

1.15 Whereas, notwithstanding the fact that the listed 12kV was evidently a lapsus calami, the Appellant still strongly maintains that the Electrical Distribution Voltage still falls within the parameters of: i. A Medium Voltage Electrical Project; and ii. An Electrical Project of "up to and including 33kV or more electrical distribution system"

1.16 Whereas, therefore, in view of the above, the Appellant maintains that this Board should uphold this First Grievance.

**2. Second Grievance: The experience of the Key Expert in question includes projects of a similar nature with the same Contracting Authority.**

2.1 Whereas, without any prejudice to the first grievance, wherein the Appellant strongly maintains that the electrical distribution voltage indicated fell within the parameters required by the Contracting Authority, dato ma non concesso that this Honourable Board were to decide otherwise, the Appellant contends that this Honourable Board should still uphold this present appeal and this for the following reasons;

2.2 Whereas the Appellant, in his offer indicated information with regards to the Key Expert 2, Warranted Electrical Engineer, that inter alia included the following information in reply to the question "Leading role in the design or design approval, implementation or supervision and commissioning of at least one high or medium voltage electrical project up to and including 33kV of more electrical distribution system with value of the electrical component of the project equal to or in excess of €2,000,000 completed within the period Jan-2015 Dec-2024":

2.3 Whereas, as is clearly evident from the above, the previous experience listed by the Appellant for Key Expert 2, Warranted Electrical Engineer, was in respect of experience obtained by the said expert in a project previously undertaken by the Contracting Authority;

2.4 Whereas the experience gained by the said Key Expert was as an Electrical Engineer forming part of the Project Management Team engaged by the Contracting Authority to supervise and certify works carried out in the "Tender for the Provision of a High Voltage Shore Connection (HVSC) System in the Port of Valletta;

2.5 Whereas at this stage, the Appellant acknowledges that he erroneously indicated the "Electrical - distribution Voltage" as 12kV. Notwithstanding this, the Appellant contends that it was clearly evident that this was a lapsus calami, and this for the reasons set out hereunder;

2.6 Whereas it does not require any specialised knowledge, deep contemplation or introspection to figure out that the project indicated, that is the "Tender for the Provision of a High Voltage Shore Connection (HVSC) System in the Port of Valletta", was a High Voltage Electrical Project, and thus definitely fell within the parameters set out by the Contracting Authority in the Tender;

2.7 Whereas any contestation by the Evaluation Committee or the Contracting Authority of this lapsus calami would be absurd, naive and bizarre;

2.8 Whereas it is implausible that the Contracting Authority would plead that it was unaware of the fact that the "Tender for the Provision of a High Voltage Shore Connection (HVSC) System in the Port of Valletta", was a high voltage electrical project, and thus doubts arise as to why the Contracting Authority did not undertake steps afforded to it by the Law to seek clarification on this matter;

2.9 Whereas it is improbable too that the Evaluation Committee did not understand or recognise or worst still did not question the nature of a project undertaken by the same Contracting Authority, namely "Tender for the Provision of a High Voltage Shore Connection (HVSC) System in the Port of Valletta". With all due respect to the same Evaluation Committee, it does not require exceptional knowledge to question whether the aforementioned project was in relation to a High Voltage Electrical Project;

2.10 Whereas given the above, it is clear that the said lapsus calami must have, at the very bare minimum, given rise to doubts in the evaluation process which the Evaluation Committee is obliged to carry out, and such doubts do not qualify their evaluation as a safe and sound recommendation.

2.11 Whereas, therefore, in view of the above the Appellant maintains that this Board should uphold this Second Grievance.

3. Third Grievance: The Evaluation Committee failed to utilise the tools at its disposal to clarify any doubts that may have arisen.

3.1 Whereas, without prejudice to the first grievance, if the Evaluation Committee had doubts with respect to whether there may have been an error in writing (lapsus calami), in the present instance, a manifestly evident error in writing, they ought to have used all facilities afforded to them by Law to ensure that their decision was a safe and sound decision;

3.2 Whereas, among the facilities available to the Evaluation Committee, there is the possibility for the Committee to request the Tenderer to submit a clarification regarding any element of the submission that has given rise to confusion or doubt, and this in fulfilment of the Committee's duty to evaluate the various offers submitted in relation to a tender;

3.3 Whereas the Contracting Authority and the Evaluation Committee clearly failed to identify the unmistakable error made by the Appellant in his submission, and therefore, both the Contracting Authority and the Evaluation Committee failed to take the necessary steps to ensure that their respective evaluation and consequently the award was safe, sound and satisfactory in terms of the Law.

## **CONCLUSION & REQUESTS**

*Now, therefore, in view of the above considerations, and further considerations and evidence that the Appellant reserves the right to bring and present during the relative hearing, the Appellant humbly requests the Public Contracts Review Board to:*

- (i) Revoke, Cancel and Annul the Contracting Authority's decision dated 13th November 2025, to award the Tender entitled 'Professional Services in Connection with the management, Supervision and Works Certification for Works Tender CT3029/2024' to EMDP;*
- (ii) Declare that Key Expert 2, namely Joseph Azzopardi, satisfies the Technical Requirements set out in the Tender entitled 'Professional Services in Connection with the management, Supervision and Works Certification for Works Tender CT3029/2024';*
- (iii) Award the Tender entitled 'Professional Services in Connection with the management, Supervision and Works Certification for Works Tender CT3029/2024' to Oasis Construction Co Ltd; or*
- (iv) Alternatively, to direct the Contracting Authority and the Evaluation Committee to carry out a fresh evaluation process on all compliant offers;*
- (v) To direct the Contracting Authority and the Evaluation Committee that the Appellant's Offer be reintegrated in the evaluation process;*
- (vi) To give those orders or directions as it deems necessary to give effect to the above requests;*
- (vii) To declare and decide that the deposit paid by the Appellant in connection with the filing of the present appeal is reimbursed in full;*

*and this under those provisions that this Board deems fit and opportune.”*

The written reply as filed by Infrastructure Malta on the 4<sup>th</sup> December, 2025 (hereinafter the ‘Contracting Authority’) wherein it held as follows:

### ***“1. Introduction***

*1.1 We, the undersigned, are instructed by Infrastructure Malta (the "Contracting Authority") to file this written reply in accordance with the provisions of regulation 276(c) of the Public Procurement Regulations (Subsidiary Legislation 601.03) (the "PPR").*

*1.2 This reply is in relation to the objection filed on 24 November 2025 by Oasis Construction Co Ltd (TID 222721) (the "Complainant") before the Public Contracts Review Board (this "Board") in connection with the decision communicated by the Contracting Authority on 13 November 2025 following the conclusion of the Tender Procedure (the "Objection").*

*1.3 The Objection is based on three (3) grievances, as follows:*

*(a) First grievance - "The interpretation of the technical requirements set out in the Tender Document, by the Evaluation Committee, was illogical, irrational and senseless" (the "First Grievance").*

*(b) Second grievance - "The experience of the Key Expert in question includes projects of a similar nature with the same Contracting Authority" (the "Second Grievance")*

*(c) Third grievance - "The Evaluation Committee failed to utilise the tools at its disposal to clarify any doubts that may have arisen" (the "Third Grievance").*

1.4 These shall be taken in turn in the same order as proposed by the Complainant, for ease of reference for this Board.

### **3. Facts**

3.1. The Tender Procedure relates to the provision of services in connection with a works tender, which works tender bears number CT3029/2024 (the "Original Works Tender"). CT3029/2024 has the following title:

"TENDER FOR THE PROVISION OF AN ENERGY EFFICIENT HIGH VOLTAGE SHORE CONNECTION (HVSC) SYSTEM AT THE MALTA FREEPORT TERMINAL 1 WEST QUAY AND TERMINAL 2 SOUTH QUAY, PORT OF MARSAXLOKK, MLT".

3.2. As is evident from the tender documentation relating to the Original Works Tender, the works include the installation of a distribution system operating at various voltages of up to and including 33kV, meaning a medium-to-high voltage network. The tender also specifies that equipment should be rated at higher voltages than the operating voltages and this includes equipment rated up to 36kV.

3.3. The tender document governing the Tender Procedure (the "Tender Document"), in Section 1- Instructions to Tenderers, Clause 5 (Selection and Award Requirements), under Heading (C) Specifications, required tenderers to have three (3) Key Experts, being:

- (a) Key Expert 1: Project Manager
- (b) Key Expert 2: Warranted Electrical Engineer
- (c) Key Expert 3: Warranted Civil Engineer

3.4. In terms of the Expert requirements set out in paragraph 6 of Section 3 (Terms of Reference), Key Expert 2 had to have, amongst other things, had a<sup>1</sup>:

"Leading role in the design or design approval, implementation or supervision, and commissioning of at least one high or medium voltage electrical project up to and including 33kV or more electrical distribution system with value of the electrical component of the project equal to or in excess of €2,000,000 completed within the period Jan-2015 - Dec-2024."

3.5. The Complainant nominated a person, Engineer Mario Falzon, as Key Expert 2 in its original tender submission. However, the project relied upon was still ongoing and therefore did not qualify as a project which was completed, as requested in the Tender Document.

3.6. The Contracting Authority issued a clarification / rectification request to the Complainant in relation to the said nomination.

3.7. The Complainant elected to replace Engineer Mario Falzon, with Engineer Joseph Azzopardi, as Key Expert 2.

3.8. In the new key expert form for Engineer Joseph Azzopardi, the project identified by Complainant referred to a 12kV electrical distribution voltage.

3.9. The Contracting Authority notified the Complainant that its offer was not compliant, due to the failure to nominate a Key Expert 2 meeting the requirements set out in the Tender Document.

3.10. The Complainant felt aggrieved by the decision of the Contracting Authority and filed the Objection.

4. **The First Grievance:** The interpretation of the technical requirements set out in the Tender Document, by the Evaluation Committee, was **illogical, irrational and senseless**

4.1. The Complainant argues, in relation to this grievance, that the requirement relating to the role of Key Expert 2 - as reproduced in paragraph 3.3 above - was interpreted in an illogical, irrational and senseless manner by the Contracting Authority.

4.2. The Complainant claims that the wording "up to and including 33kV or more" means that tenderers had to have anything from 1kV up to 33kV, and no other meaning could be attributed to it. 4.3. In addition, the Complainant relies on IEE SA guidelines and IEC standards in terms of paragraph 1.10 of the Objection, claiming that a medium voltage project is anything between 1kV and 36kV.

4.4. The scope of the Tender Document is, as evident from the title itself, to engage a service provider who will manage, supervise and certify the works intended to be procured in terms of the Original Works Tender.

4.5. The Original Works Tender sought to award a works contract for a High Voltage Shore Connection (HVSC).

4.6. In terms of the Electricity Connection and Supply Regulations (Subsidiary Legislation 545.41) ("S.L. 545.41"), the following definitions are applicable:

*"medium voltage" or "MV" means voltage of nominal RMS value greater than one kV (1kV) up to thirty three kV (33kV) in relation to alternating current between any conductor.*

*"high voltage" or "HV" means voltage of nominal RMS value greater than thirty three kV (33kV) in relation to alternating current between any conductor;*

4.7. The Tender Document therefore required, as a minimum, that the experience of Key Expert 2 extended to 33kV. This is evident from the wording up to and including 33kV or more.

4.8. The wording relating to the experience of Key Expert 2 in fact did not provide, for example, that the expert had to have experience in relation to one high or medium voltage electrical project having a voltage of 1kV or more, or between 1kV and 33kV. Had this been the wording, then the Contracting Authority would agree with the Complainant that all that was required was that the relevant expert worked on an electrical project which had a voltage within that range.

4.9 In this case, the Contracting Authority required, as a minimum, experience at voltages up to, and including, 33kV or more.

4.10. Therefore, it is evident that having experience in a system having a voltage of 33kV or more was a key requirement.

4.11. Indeed, the Tender Procedure is intrinsically linked to a High Voltage Shore Connection (HVSC). The system in question would operate at different voltages, such as 6.6kV/11kV and 33kV with related equipment rated at 12kV and 36kV respectively.

4.12. In terms of the case-law of the Court of Justice of the European Union (the "CJEU") relating to the Directive 2014/24/EU (the "Directive"), the test in relation to the principle of transparency is whether reasonably well-informed and normally diligent tenderers would interpret in the same way.<sup>2</sup>

4.13. It is submitted that a reasonably well-informed and normally diligent tenderer would have, if the requirement was not considered to be clear, requested a clarification. The reference to "including 33kV or more" evidently required experience at high voltages, commensurate with the nature of the Original Works Tender.

4.14. The argument made by the Complainant, *ex post* disqualification, is evidently an afterthought raised only due to the fact that the Complainant (by its own admission) made an error in the form submitted (referred to as *lapsus calami* in paragraph 1.15 of the Objection).

4.15. It is submitted, with respect, that this grievance ought to be rejected.

5. The Second Grievance: The experience of the Key Expert in question includes projects of a similar nature with the same Contracting Authority

5.1. The Complainant does not dispute the fact that, in the Key Expert form for Key Expert 2, 12kV was listed.

5.2. The Complainant however claims that the relevant Key Expert had experience in a similar project, and that 12kV was simply included in error.

5.3. The Complainant argues that the project referred to by the Key Expert was the High Voltage Shore Connection (HVSC) System in the Port of Valletta and the Contracting Authority was most definitely aware of the fact that this was a high voltage electrical project.

5.4. The Complainant appears to confuse what a Contracting Authority knows or ought to know, with what the evaluation committee ought to evaluate.

5.5. In terms of the General Rules Governing Tenders (the "GRGT"), tenderers bear sole responsibility for examining with appropriate care the procurement documents (rule 5.2) and, in submitted a tender, the tenderer accepts in full and in its entirety, the content of the tender document (rule 9.4).

5.6. The evaluation committee is required, in terms of Part 3: Technical Compliance, to evaluate the technical offer to ensure compliance with Clause 5(C) of the Instructions to Tenderers.

5.7. It is common knowledge - most definitely amongst reasonably well-informed and normally diligent tenderers - that an evaluation committee must only evaluate the documentation submitted by the tenderer as part of its tender.

5.8. *Arguing otherwise would be as if arguing that a reputable company, well known in an industry or sector, would not be required to prove their experience and that of their personnel, when tendering, because everyone ought to know that they are competent to provide such supplies, services or works.*

5.9. *The CJEU case-law, as well as that of the PCRB and the Court of Appeal, have reiterated this time and time again.*

5.10. *In Case 595 of 20103, this Board (differently presided) had the opportunity to examine exactly this matter. 5.11. Enemalta plc had issued a tender for the excavation of an underground tunnel from St. Andrew's to Maghtab. The tenderer, Rockcut Limited, had been disqualified as administratively noncompliant. The tender document required evidence of relevant experience in execution of works of a similar nature. The tenderer had cited projects undertaken for Enemalta plc itself (that is, the contracting authority). The tenderer failed to however submit certification from its client, namely Enemalta plc.*

5.12. *The Board, in case 595 of 2010, rightly concluded that:*

*"It was the onus of the tenderer to submit all relevant information as requested in the tender document and not for the Evaluation Board to seek confirmation of the listed contract of works carried out by the Appellant."*

*And that:*

*The Evaluation Board's duties are to:*

- I. *Ensure that all documentation is received and is in accordance with the specified requirements as stipulated in the conditions of the tender document.*
- II. *Confirm that the documentation is administratively compliant. In this case, this Board opines that the decision taken by the Evaluation Board to deem the Appellant's offer as being 'Administratively non compliant' was justified.*
- III. *The Evaluation Board should not act as Auditors but as Evaluators. In this regard, the same Board were not in duty bound to seek additional information which was missing from the tender documentation and which was mandatory obligation on the Appellant's part to submit.*

*This Board noted that it was not the first time that the Appellant tendered for such projects and the Appellant was fully aware that all requested documentation in a tender document should be submitted. Especially when one takes into account the magnitude of the tender under appeal." [emphasis added]*

5.13. *The Board therefore rejected the appeal.*

5.14. *It is submitted, with respect, that this Second Grievance ought to be rejected by this Board.*

**6. The Third Grievance:** *The Evaluation Committee failed to utilise the tools at its disposal to clarify any doubts that may have arisen*

6.1. *The Complainant claims that, if the Evaluation Committee had doubts with respect to whether there may have been an error in writing (lapsus calami), it had to use all facilities afforded to them by law to ensure that their decision was correct.*

6.2. *The Complainant would be correct, had the error formed part of the Complainant's original submission.*

6.3. *However, the Contracting Authority is expressly precluded from clarifying / rectifying the same deficiency twice.*

6.4. *The Complainant does not dispute that, as part of its original submission, it submitted a person as Key Expert 2 who did not have the necessary experience - the relevant individual quoted a project which was not completed, and the Tender Document required the project to have been completed.*

6.5. *The Complainant also does not dispute the fact that the Contracting Authority sent a clarification / rectification request, allowing the Complainant to also replace the relevant key expert.*

6.6. *The Complainant, notwithstanding this opportunity, failed for a second time to submit the documentation required in accordance with the Tender Document. It committed another error (lapsus calami) in the Complainant's own words.*

6.7. *The Complainant, as a reasonably well informed and diligent tenderer, ought to be aware of the fact that the Contracting Authority (and evaluation committee) are not expected to do all that it possible to save a tenderer.*

6.8. *The GRGT (which form an essential part of the Tender Document) provides for a three-tier system of clarifications / rectifications.*

6.9. *However, importantly, no clarifications or rectifications concerning a previous request dealing with the same shortcoming is permitted (see Notes to Clause 5 on page 8 of the Tender Document). In addition, in this case, the issue was not a matter which could be clarified. It required a change in the documentation submitted, and therefore a rectification.*

6.10. *The Complainant knew, or ought to have known, therefore that it had only one opportunity to rectify the non-compliance relating to Key Expert 2.*

6.11. *The Complainant suggests that the Contracting Authority should have issued a further clarification request following receipt of rectification response from the Complainant. This argument is without merit for several reasons.*

6.12. *The purpose of a clarification request is to allow tenderers to clarify ambiguities in their submissions. However, a clarification cannot be used to remedy fundamental non-compliance or to allow a tenderer to submit entirely new information. In this case, the form clearly did not meet the required tender criteria, as it provided evidence of a project at 12kV rather than the required 33kV or higher.*

6.13. *The only way that could be remedied is if the tenderer was given an opportunity to rectify submission, by amending the form and replacing 12kV with 33kV. However, a "rectification of a rectification" is not permitted under procurement rules and would violate the principles of equal*

*treatment and self-limitation. The Complainant had already submitted a form for Key Expert 2 which did not comply with the tender requirements. This meant that, in its response to the rectification, it had to be completely certain it was submitting a fully compliant form as it would not be given another opportunity to rectify since the Contracting Authority had already afforded the Complainant an opportunity to rectify the deficiency in the original submission. The Complainant failed to provide compliant information in response to that opportunity. To afford yet another opportunity would be to grant the Complainant preferential treatment not available to other tenderers and would undermine the integrity of the procurement process and expressly prohibited in the Tender Document. The Evaluation Committee correctly determined that no further clarification was warranted given the clear non-compliance of the submission at rectification stage.*

*6.14. Tenderers know, at submission stage, that if they make an error in a document marked Note 2 they will be given one (1) opportunity to rectify the error. It is therefore the responsibility of the tenderer to ensure that, as part of its original submission, it fully complies with the tender requirements. If they do not, then they need to be certain that their rectification response is fully accurate and compliant. In this case, the Complainant failed in both instances and the Contracting Authority had no right, let alone an obligation, to give the Complainant another opportunity to rectify its non-compliance on the same deficiency.*

*6.15. These principles have been confirmed, time and time again, by the PCRB and the Court of Appeal.*

*6.16. In the Case T-415/104, the CJEU held that in respect, that:*

*"It must be borne in mind at the outset that where, in the context of a call for tenders, the contracting authority defines the conditions which it intends to impose on tenderers, it places a limit on the exercise of its discretion and, moreover, cannot depart from the conditions which it has thus defined in regard to any of the tenderers without being in breach of the principle of equal treatment of candidates. It is therefore by reference to the principles of self-limitation and respect for equal treatment of candidates that the Court must interpret the tender specifications, for the purpose of establishing whether, as the applicant maintains, those specifications could permit the Joint Undertaking to accept the deviations."*

*6.17. This Board, in Case 1990, had confirmed that a second clarification or rectification was not possible. It also confirmed this in other cases, such as:*

*Case 1925 decided on 23rd October 2023*

*"It is also to be noted that a second rectification request on the same topic cannot be issued"*

*Case 2076 decided on 11th February 2025*

*"This situation runs fully counter to adhering to the principle of self-limitation in public procurement. The Contracting Authority cannot be expected to save a bid albeit being the cheapest one.... These judgements made it amply clear that a Contracting Authority should not be expected to go out of its way to save a particular bid to the detriment of other bidders who followed scrupulously the letter and spirit of the tender document and its requirements."*

Case 2113 decided on 28th May 2025

*"The Board notes that under the applicable procurement regulations, the Evaluation Committee may issue only one rectification request related to the subject matter of the offer."*

6.18. *The Court of Appeal in Case Number 35/22/19 stated as follows:*

*"Jekk oblatur ikun inghata opportunita' ta' rettifika imma xorta wabda jibqa' administratively non-compliant, il-bord ta' evalwazzjoni ma jistax isalva dik l-offerta billi jogghod jiri wara dak l-oblatur sakemm dan, forsi, jirregola l-ipożizzjoni tiegħu. F'dan il-każ, il-konsorzju appellat inghata kull çans jissottometti ruhu għat-talbiet tal-awtorita kontraenti, u imputet sibi jekk baqa' jitraskura dak li kellu jagħmel. L-eżċess filmanjamina' u fittfittix sabiex jiġu salvati offerti akkost ta' kollox mhux espressjoni ta' proporzjonalitajma huwa sproporzjon kontra min kien "compliant" millbidu nett. Din il-Qorti mhux l-ewwel darba li tirribadixxi li kull oblatur irid, sa mill-bidu nett mal-offerta tiegħu, isegwi rigorożimament dak li trid issejha għall-offerti u m'għandux jippretendi li jiġi mitlub "jirrangà" l-offerta biex ikun kompatibbli ma' dak mitlub."*

6.19. *The Tender Document and the case-law is crystal clear and consistent on this point - a second rectification in relation to the same deficiency is not permitted.*

6.20. *The Contracting Authority therefore submits that its evaluation was in full conformity with the Tender Document, the GRGT and applicable public procurement legislation, as well as the principle of self-limitation.*

6.21. *The Contracting Authority therefore respectfully requests this Board to reject this grievance.*

## *7. Conclusion*

7.1. *In view of the above, we respectfully request the Board to find against the Complainant and reject the Objection, in its entirety.*

7.2. *This reply is without prejudice to any further submissions that we may be allowed to make during the proceedings relating to the appeal forming the subject-matter of the Objections."*

The written reply as filed by EMDP on the 2<sup>nd</sup> December, 2025 (with a stamp dated 3<sup>rd</sup> December, 2025) (hereinafter the 'Preferred Bidder') wherein it held as follows:

*"First and foremost, EMDP as the preferred bidder is not privy to the contents of the bid submitted by Oasis Construction Co Limited and therefore cannot comment on a number of facts alleged by the objector and therefore reserves the right to make further submissions at the hearing to be held in relation to the objection in question.*

*Secondly by way of response EMDP would like to highlight the following two points, which it feels are important to the determination of the matter at hand:*

### *1.. Experience*

*The tender dossier provided that the tenderer (not his key experts)*

*.... must have experience in providing professional engineering and project management services in relation to 1No. (one) up to 3No. (three) completed projects, having a works value of at least €5,000,000 (excluding VAT) cumulatively within the period 1st January 2015 - 31st December 2024.*

*It is to be noted that the appellant was only incorporated on the 19th October 2023.*

*From a reading of the company's memorandum and article which are readily available to the public - the company officials do not hold a professional qualification of a Perit or Warranted Engineer or similar qualification allowing it to practice in Malta. Therefore there is serious doubt as to whether the appellant satisfies the experience requirement mentioned in the tender.*

## *2. Rectification*

*The appellant ex admissis states that he availed himself of a rectification allowance to nominate a new Key Expert. However in the rectification in question he indicated 12KV as part of his experience. It is useless that the appellant now states that this was a lapsus calami. The tender procedure under note 2 provides for an opportunity for rectification. If the appellant did not avail himself of that tool or availed himself wrongly, that is fatal to his bid.*

*In this respect EMDP humbly submits that appellant's objection ought to be rejected.”*

The opening and closing submissions of the Appellant, the Contracting Authority and the Preferred Bidder as delivered by their legal representatives;

## **Considers;**

The Appellant's appeal revolves around Key Expert 2 and the documentation submitted in relation to the same expert. It results to this Board that on first submission, the Appellant proposed an expert which had an 'ongoing' project rather than a 'completed' project and the Contracting Authority asked the Appellant to rectify this submission. The Appellant rectified its submission and substituted Key Expert 2 by proposing a new expert altogether. This second time round, it results that the Tender Evaluation Committee were faced with referenced experience of participation in a completed project, that is participation in IM014/2020, but found fault in the indicated 12kV figure given that per witness testimonies, the requirement was of 33kV.

Ing. Christopher Farrugia testified before this Board in two capacities, one as Chairperson of the Tender Evaluation Committee in this present procurement process (IMT013/2024), and another as the project leader in tender IM006/2020, and IM014/2020 which concerned supervision of IM006/2020. Ing. Farrugia clarified that he was not involved in the drafting or evaluation of this present tender.

The Appellant argues that the Tender Evaluation Committee missed the opportunity request a rectification on Key Expert 2, as this time round the rectification would have been regarding the indicated kV, different to the previous request for rectification. The Contracting Authority argues that once the Tender Evaluation Committee already requested a rectification on Key Expert 2 and Ing. Mario Falzon was replaced by Ing. Joseph Azzopardi, then its hands were effectively tied in requesting a second rectification regarding the same key expert.

From the testimonies as heard by this Board, it emerged clear that the Tender Evaluation Committee too excluded the possibility of a second request for rectification, but also excluded a request for clarification because to them, this was an incomplete submission. Ing. Farrugia acknowledged that from his experience in IM014/2020, the Appellant fulfilled the 33kV requirement but that the Tender Evaluation Committee was precluded from taking into account information from personal experience, and must limit itself to assessing the tender on the basis of information submitted solely by economic operators.

On this point, the Secretary of the Tender Evaluation Committee Mr Glenn Borg also testified and explained that from his experience in tender evaluations, he advised the Tender Evaluation Committee that a second request for rectification on the same subject was disallowed, and further that they could not request a clarification because this is only available for unclear information, and not missing information.

This Board shall take this opportunity to refer to the judgment of the Court of Appeal in its Superior Jurisdiction decided on the 13<sup>th</sup> November, 2025 in the names '**Krypton Chemists Limited vs. Cherubino Limited**'. Within this judgment, the Court recognised that disqualifications of offers in public procurement requires a delicate balancing act between on the one hand respecting principles of transparency, equal treatment and conformity with tender requirements and on the other hand the use of proportionality within these same principles so as not to disrupt competition and to reach the main aim, of obtaining the best offer. The Court further held that contracting authorities are obliged to distinguish between formal and minor irregularities. Minor irregularities which do not impinge on fair competition may be 'fixed' (*msewwija*) by utilising the principle of proportionality. The Court further recognised that the principle of proportionality has in recent years been interpreted by the Court of Appeal as a mechanism which permits the correcting of manifest shortcomings **as long as they do not change the offer in substance**. Further on in this judgment, the Court delved into the difference between a request for clarification as opposed to that for a rectification. This Board shall quote *verbatim* from the relevant parts hereunder:

*"23. Din il-Qorti tagħraf li kwistjoni marbuta mal-iskwalifika ta' offeriti pubbliċi hija wahda li titlob bilanc delikat bejn fuq in-naba l-wahda l-barsien tal-prinċipji ta' trasparenza, trattament indaqs u konformità mal-kundizzjonijiet tas-sejba u fuq in-naba l-obra t-thaddim tal-kuncett tal-proporzjonalità ta' dawn il-prinċipji sabiex b'hekk ma jiġux imfixkla u mxejna l-kompetizzjoni ġusta u l-ghan ewlieni li jinkiseb l-aħjar akkwist.*

*24. Il-ġurisprudenza Maltija u Ewropea f'dan il-qasam itteni li l-awtoritajiet kontraenti għandhom jimxu b'mod strett mal-kundizzjonijiet stabbiliti fid-dokumenti tas-sejba, iżda fl-istess waqt għandhom jikkunsidraw ukoll il-gravità tan-nuqqas u l-effett tiegħu fuq il-kompetizzjoni. Ifisser dan li l-awtorità kontraenti għandha d-dmir li tiddistingwi bejn irregolaritajiet formali u dawk sostanzjali. Irregolarità minuri, bħalma huma żbalji klerikali jew nuqqasijiet li ma jolqtux il-kompetizzjoni ġusta, jistgħu jiġu msewwija taht il-prinċipju tal-proporzjonalità, sakemm dan ma jwassalx għal vantaġġ kompetittiv mhux xieraq.*

*25. Fl-aħbar snin kien hemm bosta każijiet fejn il-Qorti tal-Appell interpretat il-prinċipju tal-proporzjonalità bħala mekkaniżmu li jippermetti l-korrezzjoni ta' nuqqasijiet manifesti, sakemm dawn ma jbiddux is-sustanza tal-offerta.*

*26. Dawn li ġejjin huma biss ftit eżempji: (i) fil-każ ta' **Ballut Blocks Services Limited v. Onorevoli Ministru għar-Riżorsi u l-Affarijiet Rurali et** deċiż fil-31 ta' Mejju, 2013 il-Qorti tal-Appell sabet li nuqqas ta' preżentazzjoni formali tal-preżż ma kienx biżżejjed biex l-offerta tiġi skwalifikata, peress li l-preżż seta' jiġi mislut mill-*"Bill of Quantities"* li*

kien jagħmel parti mill-offerta; (ii) *fil-każ ta' Fire-tech Limited v. Dipartiment tal-Kuntratti* deċiżi fit-30 ta' Ottubru, 2015 il-Qorti tal-Appell qalet li offerta m'għandbiex tiġi skwalifika għas-sempliċi raġuni li din tkun intbagħtet minn fuq kont elettroniku żbaljat, peress li l-użu ta' kont elettroniku flok iehor ma jibdix l-identità ta' min jagħmel l-offerta jekk mid-dokumenti nfušhom tal-offerta jobroġ ċar min ikun tassew qiegħed jagħmel dik l-offerta; (iii) *fil-każ ta' Multigas Ltd v. Central Procurement and Supplies Unit* deċiżi fis-27 ta' Jannar, 2021, il-Qorti tal-Appell qalet li n-nuqqas ta' numru tal-karta tal-identità ta' inġinier ma kienx biżżejjed biex l-offerta titqies bhala teknikament mbux konformi, peress li l-identifikazzjoni kienet ċara u l-informazzjoni setgħet tiġi pprovduta mingħajr preġudizzju; (iv) *fil-każijiet ta' PR20 JV v. Id-Direttur Ġenerali tad-Dipartiment tal-Kuntratti u ta' Executive Security Services Ltd v. Aġenzija għas-Sistema ta' Infurzar Lokali* deċiżi mill-Qorti tal-Appell fil-31 ta' Anwissu, 2021 u fis-26 ta' Ottubru, 2022 rispettivament, ingħad li nuqqas ta' firma f'dokument m'għandbiex twassal għall-iskwalifika ta' offerta iżda jekk xejn għandu jwassal biex l-awtorità kontraenti ssejjaħ lil dak l-offerent biex jiebu hsieb jagħmel il-firma fuq dak id-dokument u hu biss f'każ li l-firma tibqa' ma ssirx li l-offerta għandha tiġi mvarra; (v) *fil-każ ta' Polaris Marine Services Co Ltd v. Direttur Ġenerali tal-Kuntratti* deċiżi fid-29 ta' Anwissu, 2023, il-Qorti tal-Appell sabet li l-iskwalifika tal-offerta minhabba l-post ta' fejn giet proposta li tinvaħhal l-arma tal-EMFF mbijiex meħtieġa biex titbares il-kompetizzjoni ġusta għaladarba din il-kwistjoni ma tolgotx il-kwalità u t-tip ta' deġajjes li kien qiegħed ifittex il-Gvern skont is-sejba; u (vi) *fil-każ ta' Derek Garden Centre Co. Ltd v. Direttorat għall-Akkwist Settorali* deċiżi fit-30 ta' Lulju, 2024, il-Qorti tal-Appell sabet li l-awtorità kontraenti kellha titlob kopja sbiha tal-Europass Diploma Supplement jekk din ma gietx ippreżentata kollha u mbux tiskwalifika l-offerta.”

“29. Kjarifika hija l-ażżjoni li permezz tagħha l-awtorità kontraenti tista' titlob spjegazzjoni jew interpretazzjoni fuq informazzjoni li tkun diġà giet sottomessa mal-offerta. Naturalment il-procedura tal-kjarifika ma tistax tintuża biex dak li jkun idabhal informazzjoni għada jew biex ibiddel is-sustanza tal-offerta. Il-Qorti tal-Appell fis-sentenza **Rockcut Limited v. Direttur Ġenerali tad-Dipartiment tal-Kuntratti** deċiżi fil-25 ta' Ġunju, 2018 stabbiliet li ma tistax tingħata kjarifika ta' tagħrif li ma jkunx ingħata għaliex il-kjarifika sservi biss biex tagħmel aktar ċar tagħrif li jkun diġà mogħti iżda li ma huwiex ċar biżżejjed. Kif ingħad fis-sentenza **Steelshape Ltd v. Direttur tal-Kuntratti** deċiżi fis-7 ta' Anwissu, 2013, dak li offerent għandu jgħid, għandu jgħidu mal-offerta u mbux jippretendi li jkun mistoqsi d-dettalji tal-modus operandi tiegħu. Kjarifika, għalhekk hija limitata għal spjegazzjoni ta' elementi diġà preżenti fl-offerta, mingħajr ma tinbidel il-kompożizzjoni tagħha.

30. Rettifika, min-naha l-oħra, hija l-ażżjoni li tippermetti lill-awtorità kontraenti titlob korrezzjoni ta' żbalji jew omissjonijiet. Tali rettifika hija permessa li ssir sakemm din ma tkunx giet esplicitament eskluża fid-dokument tas-sejba. Ifisser dan, li jekk skont id-dokument tas-sejba ma tistax issir rettifika mela allura l-awtorità kontraenti tkun miżmuma milli titlob rettifika għaliex l-awtorità kontraenti hija marbuta mal-kundizzjonijiet tas-sejba, b'dana li jekk hija ma tbarishomx hija tkun qiegħda tivvantaġġa offerent fuq iehor (ara **Projekte Global Ltd v. Kunsill Lokali Marsaskala** deċiżi mill-Qorti tal-Appell fis-7 ta' Ottubru, 2014 fejn offerta li ma kinitx akkumpanjata minn garanzija xierqa ma setgħetx tiġi rettifikata għaliex tali rettifika kienet projbita mill-kundizzjonijiet tas-sejba). Minbarra dan, ir-rettifika tista' ssir biss jekk l-ommissjoni jew żball ikunu manifesti, klerikali jew formali, u dawn la jaffettwaw il-kompetizzjoni u lanqas ma jbiddu s-sustanza tal-offerta bħal b'dil fuq-preżż, fl-ispeċifikazzjonijiet tekniċi, jew fl-elementi essenzjali, Hekk pereżempju fis-sentenza **AIB Insurance Brokers Ltd v. Awtorità dwar it-Trasport ta' Malta** deċiżi fis-27 ta' Ottubru, 2021, il-Qorti tal-Appell aċċettat rettifika ta' dokument nieqes li ma kienx essenzjali u ma biddilx l-offerta.”

In these particular circumstances, had the Tender Evaluation Committee requested the Appellant to clarify on certain aspects of IM014/2020 and offer an explanation as to whether the completed project (IM014/2020) did involve 33kV or otherwise, would not have led to an unfair advantage to other participating economic operators. **After all, the Appellant's bid would have remained untouched in substance since one and the same project is still being considered.** A clarification in the circumstances, could potentially serve to shed more light on already submitted information, which remained unclear in the minds of the members of the Tender Evaluation Committee. In fact, one member testified that he assumed that perhaps Ing. Azzopardi was involved in one aspect of the tender which related to 12kV and was not involved in the higher voltage components of that tender and perhaps that was why 12kV was indicated.

A clarification on this point is warranted, and the Tender Evaluation Committee is not precluded from requesting it, what the Tender Evaluation Committee is precluded from doing, as correctly pointed out by the Contracting Authority, is requesting a second rectification on the same key expert.

In view of the above considerations, it would not be prudent for this Board to delve into the merits of other grievances raised, so as not to prejudice the Parties' positions post-award, but this Board shall be disposing of the Appellant's appeal by ordering the Tender Evaluation Committee to re-integrate the Appellant's bid, re-evaluate all bids after requesting the Appellant to clarify whether the experience already submitted with respect to Key Expert 2 Ing. Joseph Azzopardi i.e. whether IM014/2020 involved 33kV or otherwise, and if so, whether Key Expert 2 Ing. Joseph Azzopardi was involved in that 33kV part of IM014/2020. This Board wishes to make it abundantly clear that information provided must relate to already provided information i.e. shall relate to the already indicated tender IM014/2020 and no other experience should be produced.

## **DECIDE**

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to:

- a) **Uphold the Appellant's first, fourth, fifth and sixth requests**, hereby revokes the Contracting Authority's decision of award dated 13<sup>th</sup> November, 2025 as well as its rejection letter dated also 13<sup>th</sup> November, 2025, hereby re-integrates the Appellant's bid, sends the acts back to the Tender Evaluation Committee who shall re-evaluate all bids received after it requests the Appellant to clarify already provided information regarding Key Expert 2 per considerations above;
- b) **Upholds the Appellant's seventh request** and orders that the deposit paid by Oasis Construction Co Ltd be re-imbursed without delay.
- c) Abstains from taking cognisance of the second and third requests of the Appellant.

**Dr Ana Thomas**  
Chairperson

**Dr Maria Cardona**  
Member

**Mr Lawrence Ancilleri**  
Member

Wednesday 1<sup>st</sup> April, 2026.