

PUBLIC CONTRACTS REVIEW BOARD

Case 2094 – ZLC 4/2024 - Tender for the Street Sweeping Services in the locality of Ħaż-Żabbar, using Low Emission Service Vehicles Supplies

2nd April 2025

The Board,

Having noted the letter of objection filed by Dr Jason Azzopardi and Dr Alessandro Farrugia, acting on behalf of Azzopardi Busietta Advocates, acting for and on behalf of Premier Business Limited (C65941) (hereinafter referred to as the "Appellant"), filed on the 9th of December 2024;

Having also noted the letter of reply filed by Dr Dustin Camilleri and Dr Luana Xuereb acting on behalf of EMA Advocates Malta, acting for and on behalf of the Ħaż-Zabbar Local Council (hereinafter referred to as the "Contracting Authority"), filed on the 20th of December 2024;

Having heard and evaluated the testimony of the witness Mr Jorge Grech (Chairperson of the Evaluation Committee) as summoned by Dr Alessandro Farrugia acting for Premier Business Limited;

Having heard and evaluated the testimony of the witness Mr Marco Cassar (Member of the Evaluation Committee) as summoned by Dr Alessandro Farrugia acting for Premier Business Limited;

Having heard and evaluated the testimony of the witness Ms Toshiera Schembri (Member of the Evaluation Committee) as summoned by Dr Alessandro Farrugia acting for Premier Business Limited;

Having heard and evaluated the testimony of the witness Mr Brian Farrugia (Member of the Evaluation Committee) as summoned by Dr Alessandro Farrugia acting for Premier Business Limited;

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

Having noted and evaluated the minutes of the Board sitting of the 25th of March 2025, hereunder reproduced:

Minutes

Case 2093 - ZLC 4/2024 - Tender for Street Sweeping Services in the Locality of Ħaż-Żabbar Using Low-Emission Service Vehicles

1. Background of the Tender

The tender for street sweeping services in Ħaż-Żabbar, utilizing low-emission service vehicles, was published on September 6, 2024, with a submission deadline of October 7, 2024.

This tender aimed to procure an environmentally sustainable street cleaning service, aligning with Malta's national objectives to reduce carbon emissions and improve air quality.

The estimated value of the tender, excluding VAT, was €210,000.

2. Appeal and Disqualification

On December 11, 2024, Azzopardi & Busietta Advocates, representing Premier Business Ltd. (C65941), lodged an appeal against the Ħaż-Żabbar Local Council, the Contracting Authority responsible for overseeing the tendering process.

Grounds for Appeal:

Premier Business Ltd. contested its disqualification, stating that its proposal was unfairly deemed non-compliant and that the rejection had no basis in fact or law.

To proceed with the appeal, a deposit of €1,050 was paid.

A total of six bids were submitted for this tender.

3. Public Contracts Review Board Hearing

On March 25, 2025, the Public Contracts Review Board (PCRB) convened a public hearing to assess the validity of the appeal and determine whether the disqualification was justified.

The board members present were:

- Mr. Kenneth Swain – Chairman
- Dr. Ana Thomas – Member
- Mr. Richard A. Matrenza – Member

The hearing provided all involved parties with an opportunity to present their arguments and supporting evidence.

4. Attendance at the Public Hearing

Appellant: Premier Business Ltd.

- Dr. Alessandro Farrugia – Legal Representative
- Mr. Marco Scerri – Company Representative

Contracting Authority: Ħaż-Żabbar Local Council

- Dr. Dustin Camilleri – Legal Representative
- Dr. Luana Xuereb – Legal Representative
- Mr. Jorge Grech – Chairperson
- Ms. Stephanie Testaferrata de Noto – Secretary
- Ms. Toshiera Schembri – Evaluator
- Mr. Marco Cassar – Evaluator
- Mr. Brian Farrugia – Evaluator (*Participated Online*)

Recommended Bidder: Owen Borg

- Mr. Owen Borg – Company Representative
- Ms. Zvetlana Borg – Company Representative

5. Proceedings of the Hearing

Opening Statements

The Chairman, Mr. Kenneth Swain, commenced the meeting by inviting Dr. Alessandro Farrugia to present submissions on behalf of Premier Business Ltd.

Dr. Farrugia stated that, according to the rejection letter, the bid was dismissed due to a lack of proof of ownership of a mechanical sweeper. However, he argued that the tender document, signed by Director Alan Muscat, in Section 2.23 B5, clearly indicated that the company owned a Glutton mechanical sweeper, which was already in operation in local areas.

He questioned whether this information had been overlooked and argued that, if any doubts existed, the Contracting Authority should have requested clarifications instead of rejecting the bid outright.

Furthermore, Dr. Farrugia highlighted that although the Local Council stated that the contract was not solely awarded based on price, the recommended bidder, Mr. Owen Borg, was claimed in his letter that he was the lowest bidder. Dr. Farrugia contended that once the bid submitted by Christopher Bonello was disqualified, Premier Business Ltd. should have been the second-lowest bidder and, therefore, should have been awarded the contract.

Response from the Contracting Authority

Dr. Dustin Camilleri, the legal representative for the Ħaż-Żabbar Local Council, responded by stating that the answers to all objections raised by Dr. Farrugia were already addressed in the rejection letter. The Local Council stood by its decision and had nothing further to add.

Questioning of the Adjudication Board Chairman

Dr. Farrugia then questioned Mr. Jorge Grech, Chairman of the Board of Adjudication and Mayor of Ħaż-Żabbar, about the technical evaluation process.

Dr. Farrugia asked whether Mr. Grech was an engineer and what criteria he used to determine that the mechanical sweeper was non-compliant.

Mr. Grech replied that the submitted machine was not a sweeper but a vacuum cleaner, as indicated in the tender document submitted by Premier Business Ltd. He further stated that although he was not an engineer, his five years of experience in the council had given him sufficient knowledge to distinguish between different types of cleaning machines.

Further Discrepancies and Questions

Dr. Farrugia raised additional concerns, including:

1. Why a logbook was requested when even Transport Malta (TM) does not require one for such machines.

2. A discrepancy of approximately €7,000 in one of the submitted bids.

Mr. Grech deferred the financial question to the secretary.

Mr. Marco Cassar, an evaluator, was then asked to clarify the financial discrepancy. He explained that bidder Christopher Bonello had an arithmetic miscalculation and was asked for clarification as were all the other bidders.

Dr. Farrugia asked why Premier Business Ltd. was not given the opportunity to clarify its mechanical sweeper details, to which the reply was that there was no need, as the submitted machine was clearly not what was required.

Evaluator's Statements

Ms. Toshera Schembri, upon questioning, admitted that from the photo provided, it was evident that the machine was a vacuum cleaner rather than a mechanical sweeper. However, she also acknowledged that she was not an engineer and had no technical expertise in such matters.

Mr. Brian Farrugia, who participated online, reiterated that Premier Business Ltd.'s submission did not meet the technical requirements.

6. Closing Statements

Appellant's Final Remarks

Dr. Farrugia, in his closing statement, emphasized that:

- Premier Business Ltd. had always possessed a mechanical sweeper.
- The Adjudicating Committee failed to request clarification, which should have been granted according to Article 39.
- None of the adjudicating board members were engineers or possessed technical expertise in assessing mechanical sweepers.
- Discrepancies in the financial evaluation further raised concerns about the way things are done.
- Premier Business Ltd. should have won the contract following the disqualification of Christopher Bonello.

Contracting Authority's Final Remarks

Dr. Camilleri responded by reiterating two key points:

1. The financial error was a simple miscalculation, and all bidders were treated equally.
2. The submitted machine was a vacuum cleaner, not a mechanical sweeper, and the company failed to provide proof of ownership of the required equipment.

He emphasized that all bidders were treated fairly, and Premier Business Ltd. failed to meet the required technical specifications.

7. Conclusion of the Hearing

Since no further arguments were presented, Chairman Mr. Kenneth Swain formally concluded the meeting.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 25th of March 2025.

Having noted the objection filed by Premier Business Limited (C65941) (hereinafter referred to as the "Appellant") on the 9th of December 2024 and refers to the claims made by the same Appellant with regards to the tender of reference ZLC 4/2024 listed as case No. 2094 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Alessandro Farrugia

Appearing for the Contracting Authority: Dr Dustin Camilleri and Dr Luana Xuereb

Whereby, the Appellant contends with respect to:

- a) By the closing date, 8 tenders had been received. The Appellant's offer ranked second with a price of €208,552.40 while the Recommended Bidder's offer ranked fourth with a price of €209,542.20.
- b) On 6 December 2024, the Appellant received a rejection letter (vide Doc. A in the letter of objection) where according to the stated reason for rejection:
"The main reason why your procurement proposal was non-compliant is as follows:

*B5-The Economic Operator is to submit proof/evidence indicating the following requirements:
(vi) Economic Operators are to provide a list (including visuals/pictures/photos) of all the Mechanical Street Cleaning Equipment/Vehicles, as well as proof of ownership and availability of such equipment/vehicles through the submission of a self-declaration attesting the aforesaid. In case any equipment/vehicle is not owned, Economic Operators are to submit proof that they have access to such equipment/vehicles. Moreover, the Economic Operator can submit a signed declaration stating that the following equipment will be provided when needed by the Contracting Authority through hiring, purchasing, or any other means, if to date this is not owned or do not have access to, as set in Section 3 Article 6.4: 1 × Power Washer, 1 × Grass Cutter, 1 × Chewing Gum Removing Equipment, 1 × Hand Blower, 1 × High Pressure Water Bowser 1 × Mechanical Sweeper. Failure to submit proof of a mechanical sweeper, which is a mandatory requirement for this tender, has resulted in the Tender Evaluation Committee (TEC) determining the bid to be technically non-compliant."*

- c) The Contracting Authority claims that the Appellant's procurement proposal was non-compliant because it failed to submit proof/evidence of all ownership and availability of all the Mechanical Street Cleaning Equipment/Vehicles through the submission of a self-declaration attesting the aforesaid or if in any case any equipment/vehicle is not owned, to submit proof that they have access to such equipment/vehicles or that the following equipment, that is 1 × Power Washer, 1 x Grass Cutter, 1 × Chewing Gum Removing Equipment, 1 × Hand Blower, 1 × High Pressure Water Bowser 1 × Mechanical Sweeper will be provided when needed by the Contracting Authority through hiring, purchasing, or any other means.
- d) That thus this reason is manifestly unfounded since by means of a document numbered " 2.23 B5, Mechanical equipment available" (vide Doc. B in the objection letter) and which document is dated 4 October 2024 such proof/evidence was undoubtedly submitted in compliance with all the technical bids as required by the bid and as can be attested to (vide Doc. C in the objection letter).
- e) The Appellant thus submits that the Contracting Authority's reasons for rejection are manifestly unfounded, having no basis in either fact or law.
- f) That as amply demonstrated, the Appellant has adhered to all the requirements of the tender and hence the claim that the Appellant's bid is technically non-compliant is unreasonable and manifestly discriminatory, anti-competitive and disproportionate, violating all the principles underpinning public procurement in Malta and exposing the tender to the possibility of an application for a pre-contractual remedy.
- g) That in addition and without prejudice to the above, in its letter dated the 6th December 2024, the Contracting Authority has stated that the procurement has been awarded to Owen Borg for the amount of €209,542.20 excluding VAT as per the ranking hereunder (vide Doc A in the letter of objection):

Tender ID	Tenderer name	Financial offer after arithmetical correction (if applicable) (Euro)	Final Ranking
000216434	Owen Borg	209,542.20	1
000216480	Saviour Mifsud	216,227.20	2
000216457	Christopher Bezzina	212,427.20	3
000216452	Christopher Bonello	208,277.20	4
000216479	WM Environmental Lçd	258,110.00	5
000216450	David Grech	233,837.70	6

- h) That however the Contracting Authority is incorrect in stating that the bid by Owen Borg for the amount of €209,542.20 excluding VAT is the "cheapest priced offer" since as per the list of bids opened on the 7 October 2024 and published on the e-tenders website (vide Doc. D) the cheapest bid was that submitted by Christopher Bonello at a financial value of €201,877.20 and not at the

amount of €208,277.20 as erroneously stated in the Contracting Authority's same letter dated the 6 December 2024.

- i) That therefore, since Premier Business Limited (C65941) was in full conformity with the issued by the Zabbar Local Council (Ref. No: ZLC 4/2024) for the Street Sweeping Services in the locality of Haz Żabbar using Low Emission Service Vehicles Supplies against a financial value of €208,552.40 and not as erroneously being claimed, once the bid submitted by Christopher Bonello was eliminated, then Premier Business Limited was the second ranked as the cheapest priced offer and not the Recommended Bidder's offer at a financial value of €209,542.20.

The Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 20th of December 2024 and its verbal submission during the hearing held on 25th March 2025, in that:

- a) The Contracting Authority has thoroughly reviewed the Appellant's claims and submits that the decision to reject their bid was based on clear, justified grounds in accordance with the Tender's specifications and evaluation criteria.
- b) According to the list of equipment (in the appeal marked as Doc. B), as required by Section 2.23 B 5, 'Mechanical Equipment Available', a mechanical sweeper was listed as an essential equipment requirement. The Contracting Authority submits that the Appellant Company failed to provide sufficient proof of ownership of a mechanical sweeper. In fact, the Appellant's submission did not include any equipment that meets the description of a mechanical sweeper, as specified in the Tender requirements.
- c) Furthermore, the Appellant Company did not provide a declaration or any proof that a mechanical sweeper would be readily available for hire, should the Tender be awarded to them. As such, the Contracting Authority was not assured that the necessary equipment, particularly a mechanical sweeper, could be procured by the Appellant Company. Given that the mechanical sweeper was an essential component for successfully completing the Tender's objectives, this lack of assurance raised concerns regarding the Appellant's ability to fulfil the Tender's requirements.
- d) It follows that, the Appellant Company's failure to provide any equipment that satisfies the technical specifications of a mechanical sweeper is a sufficient reason for the Contracting Authority to consider the Appellant non-compliant with the Tender's terms.
- e) Furthermore, the Contracting Authority submits that the Tender was evaluated based on the 'Best Price Quality Ratio'. This evaluation mechanism required that the selected bidder meet both price and technical criteria. It was not solely focused on the lowest price but also on ensuring that the bidder met the administrative and technical requirements of the Tender.
- f) In the Letter of Refusal (in the appeal marked as Doc. A), the Contracting Authority stated that the procurement was recommended for award to Owen Borg, this being the cheapest priced offer

satisfying the administrative and technical criteria. The determination was made based on several factors beyond just the financial aspect, which must be considered in the evaluation process.

- g) Furthermore, when the Appellant Company claims that Christopher Bonello would have been the cheapest financial option, the Contracting Authority respectfully asserts that this matter falls outside the Appellant's remit. The refusal decision considers a range of technical and administrative factors, not just the lowest financial offer. Therefore, the Appellant's focus on the financial aspect alone overlooks the broader scope of considerations that the Competent Authority must consider when making such a determination.
- h) In conclusion, the Contracting Authority respectfully maintains that the Appellant Company did not fulfil the necessary requirements outlined in the Tender. The failure to demonstrate possession or access to a mechanical sweeper, a key piece of equipment, coupled with the absence of sufficient supporting documentation, renders the Appellant non-compliant with the Tender specifications. Additionally, the evaluation process was based on a comprehensive assessment of both price and technical criteria, not solely on financial considerations. Therefore, the decision to award the contract to Owen Borg, based on the lowest price and compliance with all administrative and technical requirements, was justified. The Contracting Authority submits that the refusal of the Appellant's bid was in full accordance with the Tender process, and there are no grounds for overturning this decision.

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

- a) **On the issue of the financial bids and financial clarifications –**
 - i. This Board notes that the 'Criteria for Award', as per paragraph 6 – Section 1 of the tender dossier, explicitly states that the Best Price-Quality Ratio mechanism was to be used. This means that the recommended bidder was not necessarily the economic operator who submitted the lowest priced, administratively and technically compliant offer. In this specific case, 60% of the score was allocated to technical matters, while 40% was allocated to financial matters.
 - ii. The appellant argues that there was a discrepancy in the financial offer of a specific economic operator, namely Mr Christopher Bonello. According to the Contracting Authority's "Opened Tender Details" document, his bid amounted to €201,877.20, whereas the rejection letter received by the appellant on 6th December 2024, states that Mr Christopher Bonello's financial offer was €208,277.20. After hearing the testimony of Mr Marco Cassar under oath and cross referencing with the Evaluation Report, the Board concludes that this discrepancy was the result of a 'Correction of Arithmetical Error' as permitted under Section 17 of the General Rules Governing Tenders. The section states: *"Admissible tenders will be checked for arithmetical errors by the Evaluation Committee. Without prejudice to other arithmetical errors which may be identified, the following*

errors will be corrected as follows:.....” At the time of the “Opened Tender Details” no financial evaluation had yet taken place.

- iii. Therefore, the Board concludes that the Evaluation Committee fully complied with its duties and adhered to the principles of equal treatment and self-limitation.

b) **On the issue of the Mechanical Sweeper -**

- i. The following points from the Tender Evaluation Grid are to be considered as relevant:
“In line with the above, Economic Operators are to provide a list (including visuals/pictures/photos) of all the Mechanical Street Cleaning Equipment/Vehicles, as well as proof of ownership and availability of such equipment/vehicles through the submission of a self-declaration attesting the aforesaid.”
“For the Mechanical Street Cleaning Equipment/Vehicle criteria, a ‘0’ score will be allotted if the Economic Operator does not provide the list and pictures/visuals/photos as well as the required logbook and permit or the documentation does not illustrate all minimum requirements..... If a score of ‘0’ shall be allotted, the bidder shall be disqualified”
- ii. The appellant’s submission included a self-declaration confirming the possession of one Mechanical Sweeper, as required by the tender document. The issue arises from the “visuals/pictures/photos” which were also required for full compliance with the tender specifications.
- iii. For the “Mechanical Sweeper”, the appellant submitted documentation and images of a “Glutton 2 2 1” model, which is listed in its own documentation as a “waste vacuum cleaner” that is “hand guided and therefore it is not required to have a road license issued by Transport Malta”.
- iv. This Board agrees with the testimony under oath of the evaluation committee that there is a clear distinction between what was requested in the tender document and what the appellant submitted. While the product offered by the appellant could potentially fulfil the desired objectives, it is not meet the specific requirements of the contracting authority. Since the tender dossier was clear and unambiguous, the evaluation committee is bound by the principle of self-limitation.
- v. Furthermore, since all Terms of Reference, including the Evaluation Grid, are subject to Note 3, no rectifications are allowed. Clarifications can only be issued if deemed necessary. If it is determined that a clarification cannot resolve the issue at hand, the tender evaluation committee is not obliged to issue such a clarification request. Reference is made to the General Rules Governing Tenders, paragraph 16.3 which states that *“No clarifications shall be allowed where there is no doubt that the submitted technical offer does not comply to the requested specifications.”* In such cases, the principle of equal treatment is also maintained.
- vi. In the Board’s opinion, based on all of the above considerations, the appellant’s grievance must be rejected, and the decision of the Contracting Authority is upheld.

The Board,

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

- 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 Ana Thomas
Member

Mr Richard A. Matrenza
Member