

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case 2119 – KLMsd/TDR/04/2024 - Tender for the Provision of Driver Services within L-Imsida Local Council**

**11<sup>th</sup> June, 2025**

The Board,

Having noted the letter of objection filed by **Mr Ryan Mercieca** acting for and on behalf of **Yama Yami Ltd C-87476**, (hereinafter referred to as the appellant) filed on the 18<sup>th</sup> November, 2024;

Having also noted the letter of reply filed by **Dr Ryan Ellul** acting for and on behalf of **L-Imsida Local Council** (hereinafter referred to as the Contracting Authority) filed on the 22<sup>nd</sup> January, 2025;

Having heard and evaluated the testimony of the witness Mr Alan Vella (Chairperson of the Technical Evaluation Committee) as summoned by Dr Kirsty Muscat acting for and on behalf of Yama Yami Limited C-87476;

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

Having noted and evaluated the minutes of the Board sitting of the 9<sup>th</sup> June, 2025 hereunder-reproduced.

### **Minutes**

Case 2119 KLMsd/TDR/04/2024 – Tender for the Provision of Driver Services within the Msida Local Council.

The tender was issued on the 15<sup>th</sup> of May 2024, and the closing date was the 13<sup>th</sup> of June 2024.

The estimated value of the tender, excluding VAT, was €95,397.60.

On 18<sup>th</sup> November 2024, Yama Yami Ltd.(C87476) lodged an appeal against Msida Local Council – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations. The appellant objected for having his tender cancelled.

A deposit of €400. was paid.

There were two bids.

On the 9<sup>th</sup> of June 2025, the Public Contracts Review Board (PCRB), composed of Dr Vince Micallef as Chairman, Mr. Keith Victor Grech and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – Yama Yami Limited. (C87476)**

Dr Kirsty Muscat – Legal Representative.

**Contracting Authority – Msida Local Council.**

Dr Ryan Ellul – Legal Representative.  
Mr. Allan Vella – Executive Secretary.  
Ms. Josette Micallef – Executive Secretary.  
Ms. Christine Amaira – Evaluator.  
Mr. Charles Selvaggi – Evaluator.  
Mr. Nicholas J Chircop – Evaluator – online.

**Recommended Bidder – Andre Derek Simpkin. (Vat. No. 2706-5305)**

Dr Lara Attard – Legal representative.  
Ms. Tania Simpkin – Company Representative. – online

**Opening Statements**

Dr Vince Micallef, Chairman of the Public Contracts Review Board, welcomed the parties and invited the appellant’s legal representative, Dr Kirsty Muscat, to deliver her initial submissions. Dr Muscat opted instead to call a witness.

**Witness**

*Mr. Alan Vella (ID 18167M) – summoned by Dr Kirsty Muscat.*

Mr. Vella was the Chairman of the Evaluation Committee and formerly served as Executive Secretary of the Council. He no longer holds that position. He drafted the tender between January and May 2024. There were two bidders. The tender specifications required submission of a key expert form, a CV, a valid license, and a police conduct certificate. In the case of Yama Yami, the key expert form was submitted blank, and the required information was not duly provided. No rectifications were requested.

The tender was published in May, and the decision was made in October 2024. The Evaluation Committee forwards all documentation to the Local Council, and bidders are informed of the outcome once the decision is approved.

Mr. Vella confirmed that he did not reply to four emails sent by Yama Yami, citing various reasons, primarily changes within the Local Council. The second bidder submitted all documents required in the tender.

*Cross-Examination by Dr Ryan Ellul*

Mr. Vella stated that at the time of the award, Mr. Ryan Mercieca of Yama Yami was involved in another tender with the Local Council and Infrastructure Malta regarding a project manager for the Msida Creek project.

The Chairman intervened, referencing a clause in the tender which stated that a bidder could not apply if already awarded another tender. However, Mr. Vella maintained that the refusal was based on the established criteria and the missing documentation. He also confirmed that the appellant was informed of the decision via the ePPS system.

Dr Muscat acknowledged that she was unaware of her client's role as a liaison for Infrastructure Malta. She requested another hearing as her client was not present. The Chairman noted that the hearing had already been repeatedly postponed. Dr Muscat was given an opportunity to contact her client online but requested an adjournment to regularize the hearing of Mr. Alan Vella and to confer with her client.

The Contracting Authority objected to the adjournment. Dr Lara Attard, representing Mr. Simpkin, the Preferred Bidder, also objected, arguing that the appellant's absence demonstrated a lack of interest. Dr Muscat countered that her client had been denied the opportunity to participate online. The Chairman remarked that this was unusual, as other parties had been allowed to attend online.

Ultimately, the Chairman ruled that the request for adjournment was denied. He emphasized that all parties had been informed—*ad nauseam*—of the hearing dates and times. The absence of the appellant was considered a personal choice.

## **Final Submissions**

### *Final submissions by Dr Kirsty Muscat*

The decision was issued on 6th November 2024 and stated: “After this offer was found being technically non-compliant and couldn't be considered further, the Evaluation Committee recommends that this tender is awarded to Andrew Derek Simpkin for the amount of €22,963.20 exclusive of VAT, this being the cheapest compliant offer.”

The appellant only received this decision after multiple emails sent to the Local Council inquiring about the process. Citing Regulation 272 of the Public Procurement Regulations, she quoted:

*“The communication to each tenderer or candidate concerned of the proposed award or the cancellation of the call for tenders shall be accompanied by a summary of the relevant reasons relating to the rejection of the tender, as set out in Regulation 242.”*

Dr Muscat argued that the reasons provided for the rejection of Yama Yami's bid were vague, no clarifications or rectifications were requested, and emails were not answered. The explanation that Local Council members had changed, was not valid. She referred to Note 2, which states that certain submissions could be rectified at a later stage. Yama Yami was not given a clear reason for non-compliance despite offering the lowest bid. Dr Muscat demanded that the decision be revoked.

### *Final submissions by Dr Ryan Ellul*

Dr Ellul explained that all stages of the tender process were documented, and the Evaluation Board could not provide exclusive information to one bidder. The law requires a summary of relevant reasons, and Yama Yami was informed of being technically non-compliant.

Specifically, Yama Yami submitted an offer (PDF Doc 171559626312) for a driver with Msida Local Council, which was entirely blank—no name or relevant details were included. As such, clarification was unnecessary.

Document 3.1F states that a bidder cannot hold another contract with the same Local Council. The appellant had another active contract for a liaison officer, awarded and published on 21<sup>st</sup> November, 2024. The Evaluation Committee correctly deemed Yama Yami non-compliant.

The Board duly observed during the Contracting Authority submissions, that the Appellant, took up another employment with the Local Council following a successful bid won by the Appellant.

The legal counsel of the Contracting Authority stated that the new tender which the Appellant is now employed upon, precludes the same Appellant from taking up any other employment (including the employment to this tender) which preclusion is clearly stipulated in the current employment terms and conditions of the Appellant.

Given the potential stalemate for all parties concerned, the Board invited all parties to exit the PCRB hall to regulate their respective positions.

The parties resumed and the Appellant insisted for the Appeal to proceed.

The Chairman invited Dr Lara Attard Legal representative for the Recommended Bidder for her Final Submissions.

Dr Attard argued that the appellant disregarded fundamental principles laid out by the Court of Appeal. The Preferred Bidder could not proceed with the award while the appellant—who was ineligible—persisted with the appeal. Emails are not answered during an ongoing tender; all information must be accessed via the ePPS platform.

She clarified that Note 2 is not meant for the Evaluation Committee to complete missing information. Article 62, sub-article 1, states that a bid must be complete upon submission. The appellant's suggestion that they could selectively choose between contracts was unacceptable.

Since the submission was blank and the appellant failed to appear, the Board had no basis to investigate further. The appeal should be denied, and the Preferred Bidder allowed to proceed.

Dr Muscat reiterated that her client had every right to appeal and insisted that procedural fairness had not been observed.

Dr Attard concluded by citing Procurement Policy 40, which states that rectifications must not alter the substance of a bid. The issue in question arose from bidder negligence.

### **Conclusion of the Hearing**

With no further arguments presented, Chairman Dr Vincent Micallef thanked all parties and formally concluded the session.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 9<sup>th</sup> June, 2025.

Having noted the objection filed by Mr Ryan Mercieca for and on behalf of Yama Yami Limited (hereinafter referred to as the Appellant) on 18<sup>th</sup> November, 2024, refers to the claims made by the same Appellant with regard to the tender of reference KLMsd/TDR/04/2024 listed as case No. 2119 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Kristy Muscat
Appearing for the Contracting Authority:	Dr Ryan Ellul
Appearing for the Recommended Bidder:	Dr Lara Attard

Whereby, the Appellant contends that:

Your organisation has been unsuccessful for the Call for Tenders with title *TENDER FOR THE PROVISION OF DRIVER SERVICES WITHIN THE L-IMSIDA LOCAI COUNCIL* and C/T CA Unique ID 'KLMsd / TDR/ 04 / 2024', as per the below details.

*“After this offer was found being technically non-compliant and couldn't be considered further, the Evaluation Committee recommends that this tender is awarded to Andrew Derek Simpkin for the amount of €22963.20 exclusive of VAT, this being the cheapest compliant offer.”*

The chain of events leading to this objection are as follows:

A call for tenders was published by the Contracting Authority, the L-Imsida Local Council, and after the evaluation of the tenders received by the L-Imsida Local Council, the same Contracting Authority failed to inform the appellant of its' decision. Following various emails being sent by the appellant to the Contracting Authority asking for an update about the tender, it was informed by virtue of an email dated the 6<sup>th</sup> of November 2024, Yama Yami Limited was informed that its' offer was technically non-compliant and

couldn't be considered further, and the Evaluation Committee recommended that the tender be awarded to Andrew Derek Simpkin who was allegedly the cheapest compliant offer.

That the grounds for this objection are clear and manifest.

#### Reason for Appeal

That effectively the appellant only received an email dated the 6<sup>th</sup> of November 2024 which was only sent after the appellant sent an email asking whether there was a decision with regards to his tender submission. A copy of this email is being hereby attached and marked as Document A.

That according to regulation 272 of the Public Procurement Regulations ("PPR") is adamant when it states

*"The communication to each tenderer or candidate concerned of the proposed award or of the cancellation of the call for tenders shall be accompanied by a summary of the relevant reasons relating to the rejection of the tender as set out in regulation 242 or the reasons why the call for tenders is being cancelled after the lapse of the publication period, and by a precise statement of the exact standstill period."*

This was clearly not done by the Contracting Authority, since in its email, the Contracting Authority simply stated that the tenderer was technically non-compliant with no indication as to reasons how this decision was reached.

Additionally, the appellant is also informed that Andrew Derek Simpkin has already been asked to perform the work which was meant to be awarded by means of this tender prior the adjudication.

Following a request *via* email to the Msida LC to provide the reason for the decision which have never been replied, the appellant found the Evaluation Report in the *e-tenders* portal referred to Doc B. The decision was based on the following:

*"This offer was considered to be technically non-compliant for the following reasons: Doc 5 – Was not submitted. Doc 6 – Was not submitted. Doc 7 – Was not submitted. Doc 8 – Was not submitted. Doc 9 – Was not submitted."*

The mentioned documents, which are being annexed respectively with this appeal fall under Note 2, thus the Authority is obliged to seek rectification which was not done in this case.

The appellant is humbly submitting that it was technically compliant in its submission. That although no rectification was requested, its' offer was technically compliant and there was no reason what so ever to be deemed as technically non-compliant.

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This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on 22<sup>nd</sup> January, 2025 and its verbal submission during the hearing held on the 9<sup>th</sup> June, 2025, in that:

Illi l-Kunsill kontraenti gieghed in primis jichad kull allegazzioni msejjsa fl-appell imressaq minn Ryan Mercieca bhala infondanti fil-fatt u fid-dritt.

Illi irid jigi rilevat li ghalkemm gieghed jigi ndikat li l-appell gie ntavolat fisem socjeta kummercjali, l-appell gie ffirmat minn Ryan Mercieca fismu personali u mhux ghan-nom u in rappresentanza ta' socjeta' kummercjali.

Illi b'referenza ghal fatt li l-Kunsill kontraenti m'ghaddhiex ragunijiet ghal liema raguni l-appellanti ma intazilx, il-Kunsill jirrimarka li d-dicitura tal-ligi hija krystallizzata, u cioe, kif sahaq l-appellanti stess, *...shall be accompanied by a summary of the relevant reasons ....* Tant kemm l-appellant m'ghandhux mis-sewwa li fl-appell tieghu stess nizzel ir-ragunijiet halfejn l-offerta tieghu ma kienetx ikkunsidrata. Bir-rispett u in vista ta' dan l-argument imressaq mill-appellant ma jreggix.

Ili l-Kunsill kontraenti jaghmel referenza ghad-dokumentazzioni annessa mal-appelli odjern, jirizulta li l-appellant u/jew is-socjet kummercali naqset milli timla daww il-formoli hekk rikjesti u ghaldaqstant l-offerta ma kienetx wahda kompluta.

Dan ghall-fatt li kull dikjarazzioni / Document ghandhu jkun mimi u ffirmata mill-persuna u/jew socjeta kummercjali li tkun gieghda tibbidia fl-imsemmija Document.

Dan dovut ghall-fatt li l-offerta hija forma ta' kuntratt u l-firma f'kull Document taghmel daww il-partijiet tal-offerta vinkolanti. Bir-rispett, il-Kunsill kontraenti ma jista qatt jaccetta dokumenti mhux iffirmati u/jew mimlija, anke jekk tali dokumenti qieghdin jigu sottomettati fi stadju ta' offerta.

Fuq din il-linja tal-hsieb, l-Agenzija kontraenti taghmel referenza ghad-decizjoni tal-Qorti tal-Appell fl-ismijiet *PR20 JV konsorzju maghmul minn Rock Cut Limited (C-10164) u Pato SRL kontra Id-Direttur Generali tad-*

Dipartiment tal-Kuntratti, il-Korporazzjoni għas-Servizzji tal-Ilma, u Bianco Impianti SRL, decizza fil-31 ta' Annessu tas-sena 2021 per S.T.O Prim Imballef Mark Chetcuti, Onor. Imballef Giannino Caruana Demajo u Onor. Imballef Anthony Ellul, Appell Numru 112/2021/1. F'din l-imsemmija dedizzjoni, il-Qorti tal-Appell Superjuri pronunzjat ruhha li l-kliem kien car u cioe' li ghandu jkun hemm dikjarazzjoni u lil-offerant ghandu jiddikjarajekkxi whud humiex fis-settur pubbliku jew le. II-Qorti tkompli tghid li I-WSC ma tista' qatt tassumi li l-esperti ewlenin mhumiex fis-settur pubbliku izda ghandu jigi spjegat.

Ili l-Kunsill kontraetni ser jimxi fuq din il-linja tal-hsieb u cioe' li l-istess qatt ma jista jassumi x'inhu l-ezitu ta' dawk id-dokumenti lil-appellant nagas milli jimla' fl-istadju ta' offerta.

Illi in oltre u b'referenza ghal dan, l-istess Kunsill jaghmel referenza ghan-nota 3 u cioe' *No rectification shall be allowed. Only clarifications on the submitted information may be requested. Tenderers will be requested to clarify the submitted information within five (5) working days from notification.* Bir-rispett kull dikjarazzjoni li kellha tigi sottomessa fl-istadju tal-offerti kellhom jigu ffirmati mill-appellant u/jew mis-sodjeta odjerna.

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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 as follows in their entirety.

The Public Contracts Review Board (hereinafter referred to as "the Board") has examined the appeal lodged by the appellant concerning the decision taken by the Contracting Authority (CA) in respect of KLMsd/TDR/04/2024 – *Tender for the Provision of Driver Services within the L-Imnsida Local Council.* Following a thorough analysis of the submissions, oral testimonies and applicable legislation, the Board hereby delivers the following decision.

### **First Grievance – Breach of Regulation 272 of Subsidiary Legislation 601.03**

The appellant's first grievance pertains to the CA's failure to notify the appellant of the rejection of its tender within the validity period at law, and in the manner stipulated under Regulation 272 of the Public Procurement Regulations, Subsidiary Legislation 601.03.

Regulation 272 mandates that:

*"The communication to each tenderer or candidate concerned of the proposed award or of the cancellation of the call for tenders shall be accompanied by a summary [emphasis of this Board] of the relevant reasons relating to the rejection of the tender as*

*set out in regulation 242 or the reasons why the call for tenders is being cancelled after the lapse of the publication period, and by a precise statement of the exact standstill period."*

From an examination of the acts of these proceedings, it emerges clearly that no formal rejection letter, in the manner prescribed by law, was issued to the appellant within the timeframe required. The only communication presented by the CA is a correspondence dated 6<sup>th</sup> November, 2024 — this being approximately five (5) months after the closing date of the Call for Tenders.

The CA attempted to justify this omission by stating that, as informed on the 5<sup>th</sup> March, 2024, the tendering process had been stalled upon the submission of an appeal by another bidder (Yama Yami), and consequently, the system did not allow for uploading of acceptance or rejection letters. However, the Board finds this reasoning unconvincing and procedurally deficient. An appeal by a third party does not exempt the CA from complying with the procedural safeguards embedded in Regulation 272.

Moreover, the communication of the 6<sup>th</sup> November, 2024, while indicating that the appellant was found to be technically non-compliant, falls materially short of fulfilling the legal requirements. It does not provide a summary of the relevant reasons for the rejection of the appellant's offer nor does it contain a precise statement of the standstill period as legally required. In essence, the communication lacks the constitutive elements mandated by Regulation 272.

Accordingly, the Board finds merit in the appellant's first grievance and holds that the CA has failed to observe its statutory obligations in this regard.

### **Second Grievance – Failure to Allow Rectification under Note 2 Provisions**

The second grievance concerns the Evaluation Committee's failure to issue a clarification or rectification request in respect of the documentation submitted by the appellant, particularly the following:

1. Key Expert Form – submitted, but entirely lacking content.
2. Driving Licence – not submitted.
3. Curriculum Vitae – not submitted.
4. Police Conduct – not submitted.

The Board acknowledges that the above documents were either missing or incomplete at the time of submission. However, the Board must carefully evaluate this omission in light of the applicable Procurement Policy Note #40, issued on 01.06.2023, which governs Clarification and Rectification Requests during the Evaluation Stage.

The said policy note explicitly states:

*“Tenderers will be requested to clarify/rectify any incorrect and/or incomplete documentation and/or submit any missing documents within five (5) working days from Notification.”*

Furthermore, the policy document distinguishes between requirements designated as Note 2 and Note 3, with Note 2 requirements allowing for both clarification and rectification.

Upon review of the tender documentation issued by the CA, it is evident that the requirements related to the aforementioned documents were marked as Note 2. This designation imposes a duty on the Evaluation Committee to issue a formal request for clarification/rectification where such documentation is missing or incomplete.

During the examination-in-chief, the Chairperson of the Evaluation Committee testified under oath that no such request was issued, justifying this decision on the grounds that the Key Expert Form—though submitted—was entirely devoid of content. The Board finds this justification to be at odds with both the letter and the spirit of Procurement Policy Note #40.

It is precisely in such circumstances—where a form is submitted but left incomplete—that the requirement to request rectification becomes operative. The policy leaves no discretion in such cases: the tenderer must be granted the opportunity to rectify omissions or clarify incomplete submissions within the prescribed period.

Accordingly, the Board concludes that the appellant was procedurally denied the right to rectify its submission, in breach of its legitimate expectations and the principles of transparency, proportionality, and equal treatment that underpin public procurement law.

## **Decision**

For the reasons outlined above, the Board finds in favour of the appellant on both grounds of appeal.

Accordingly, the Board:

1. Declares that the Contracting Authority has acted in breach of Regulation 272 by failing to issue a proper rejection letter within the required legal timeframes and without providing the necessary justification and standstill period;
2. Finds that the Evaluation Committee failed to comply with the provisions of Procurement Policy Note #40 by not issuing a clarification/rectification request in relation to documentation required on a Note 2 basis;
3. Upholds the appeal and orders the cancellation of the current award process, including the communication of award and rejection, dated the 6<sup>th</sup> November, 2024;
4. Directs the Contracting Authority to restart the evaluation process, through a newly constituted Technical Evaluation Committee from the stage of the administrative compliance check, ensuring strict adherence to applicable procurement rules and allowing the appellant the opportunity to rectify its submission in accordance with Note 2 procedures;
5. Directs that the deposit paid by the Appellant to be reimbursed.

**Dr Vincent Micallef**  
**Chairman**

**Mr Lawrence Ancilleri**  
**Member**

**Mr Keith Victor Grech**  
**Member**