

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case 2121 – QLLC/08/2023 – Tender for the Collection of Bulky Refuse in an Environmentally Friendly Manner**

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

The Board,

Having noted the letter of objection filed by Dr Frank Anthony Tabone acting for and on behalf of **Sultech & Co.** (hereinafter referred to as the appellant) filed on the 9<sup>th</sup> February, 2025;

Having also noted the reasoned letter of reply filed by Dr Larry Formosa acting for and on behalf the **Qala Local Council** (hereinafter referred to as the Contracting Authority) filed on the 13<sup>th</sup> February, 2025;

Having also noted the reasoned letter of reply filed by Dr Daniel Calleja acting for and on behalf the **MJ Trading Limited** (hereinafter referred to as the Recommended Bidder) filed on the 15<sup>th</sup> February, 2025;

Having took cognizance of the fact that all the parties did not wish to re-summon the witnesses already heard during the preceding proceedings before this Board thereby relying on the testimonies of all witnesses heard on the 2<sup>nd</sup> April, 2024;

Having taken cognizance 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 28<sup>th</sup> November 2024 hereunder-reproduced.

### **Minutes**

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

Case 2121 QLLC/08/2023 – Tender for the Collection of Bulky Refuse in an Environmentally Friendly Manner.

The tender was issued on the 13<sup>th</sup> of October 2023, and the closing date was the 7<sup>th</sup> of November 2023.

The estimated value of the tender, excluding VAT, was €24,500

On 9<sup>th</sup> February 2024, Sultech & Co lodged an appeal against the Qala Local Council – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations. The appellant's bid was not the cheapest.

A deposit of €400.00 was paid.

There were Three bids.

On the 19<sup>th</sup> of June 2025, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Dr Ana Thomas, and Mr. Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant: Sultech & Co.**

- Dr Frank Anthony Tabone – Legal Representative (online)
- Mr. Noel Sultana – Company Representative (online)

**Contracting Authority: Qala Local Council.**

- Dr Larry Formosa – Legal Representative. (online)
- Ms. Heidi Grech – Secretary. (online)
- Mr. William Sultana – Evaluator (online)
- Mr. Mark Formosa – Evaluator (online)
- Eng. Mario Cauchi – Evaluator (online)
- Ms. Manolita Manicaro – Company representative (online)

**Recommended Bidder: MJ Trading Ltd.**

Dr Daniel Calleja – Legal Representative (online)

Mr. Ryan Mercieca – Company representative (online)

**Witnesses:**

Mr. Brian Farrugia – Transport Malta (online)

**Opening Statements**

Dr Vincent Micallef, Chairman of the Public Contracts Review Board, welcomed the parties and invited the appellant's legal representative, Dr Frank Anthony Tabone, to deliver his initial submissions.

**Initial Submissions***Initial submissions by the Appellant*

Dr Frank Anthony Tabone, legal representative for Sultech & Co, explained that a decision had already been taken on the 5th of May 2024 by the PCRB. That decision was subsequently contested before the Appeals Court of Justice. In its ruling of the 16th of July 2024, the Appeals Court of Justice annulled the Board's sentence and ordered that the indictment be referred back to the PCRB for further investigation of Sultech & Co's complaint. The complaint concerns whether, for the purposes of regulation 235 relating to Public Procurement, MJ Trading Ltd can lawfully make use of the vehicles provided by Malta Recycle and Waste Collection Ltd, as stated in subsidy legislation no. 499.68 and with reference to sub-articles 46.1 and 58.1 of the same legislation.

Dr Tabone stated that, regarding witnesses, the acts already include testimonies from Evaluator Mr. William Sultana, the Transport Malta representative Mr. Daniel Caruana, and the representative of the Resource Authority, Mr. Jonathan Henwood all of whom testified on the 5th of March 2024. He requested that if the other parties agreed, there would be no need to summon these witnesses again.

Dr Larry Formosa, legal representative for the Qala Local Council, and Dr Daniel Calleja, legal representative for the Recommended Bidder, agreed.

In light of this, the Chairman quoted the following:

"The parties agree that in respect of the testimonies of Mr. William Sultana, evaluator, Mr. Daniel Caruana representing Transport Malta, and Mr. Jonathan Henwood, representing the Resources Authority, who already testified before this Board on the 5th of March 2024, the Board is to rely on the testimonies already given without the need for them to testify once more. The Board accedes to this suggestion."

Dr Tabone further referred to the witnesses. He explained that under the call for tenders, the operator was required to provide two specific vehicles—two trucks, bearing registration numbers ECM602 and HCC753 respectively. These trucks were registered with Malta Recycle and Waste Collection Ltd, and a contract had been signed between Malta Recycle and Waste Collection Ltd and MJ Trading Ltd, a copy of which was submitted.

Dr Tabone noted that according to the witnesses, these trucks could never have been rented for the specific use required in the tender document. This was corroborated by Mr. William Sultana, who presented a copy of the contract, and also by Mr. Daniel Caruana of Transport Malta, who explained that the two specific trucks could not be used. For a vehicle to be rented, it must bear number plates beginning with the letters "QZ." Therefore, if these vehicles were used, MJ Trading Ltd would be in breach of law no. 499.68 and sub-articles 46.1 and 58.1 of the same legislation. He quoted:

*"No one can provide services of renting vehicles, unless authorized to do so."*

Thus, he argued, the offer could never have been accepted as it contravened the law.

#### *Initial Submissions by the Contracting Authority*

Dr Larry Formosa stated that, in light of the ruling delivered by the Appeals Court, the Contracting Authority would submit to the Board's decision.

#### *Initial Submissions by the Recommended Bidder*

Dr Daniel Calleja stated that he would reserve his submissions for the Final Submissions stage.

### **Final Submissions**

#### *Final Submission by Dr Frank Anthony Tabone*

Dr Tabone reiterated that there had been a violation of the law, and that the operator would be in breach of regulation 499.68.

#### *Final Submissions by Dr Larry Formosa*

Dr Formosa stated that the Contracting Authority would abide by the decision of the Board.

#### *Final Submissions by Dr Daniel Calleja*

Dr Daniel Calleja stated that the tender criteria required the provision of a main vehicle and a backup vehicle, both duly registered with ERA for the transportation of bulky refuse. MJ Trading Ltd fulfilled these requirements. He noted that the appellant claimed the recommended bidder lacked the necessary permits; however, the tender document did not require the submission of such proof. Regarding the Transport Malta permits, he argued that such requirements went beyond what was asked for in the tender document.

He affirmed that the recommended bidder had satisfied all the criteria established by the Contracting Authority, had submitted the most economically advantageous offer, and therefore the appellant's request should be denied.

*Concluding Remarks by Dr Frank Anthony Tabone*

Dr Tabone emphasized that, had the vehicles been put into operation, they would have breached the law and failed to meet the specifications outlined in the tender document. As such, the recommended bidder did not satisfy the required conditions.

**Conclusion of the Hearing**

At the end of the meeting, Ms. Manolita Manicaro, representing the Qala Local Council, noted for informational purposes that Mr. Paul Buttigieg, Chairman of the Evaluation Committee, was not present due to technical difficulties with connecting online.

The Chairperson remarked that since, legal representatives and other members of the Evaluation Committee were present, this had not affected the proper conduct of the meeting. With no further arguments presented, Dr Vince Micallef thanked the parties and formally concluded the session.

There being no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 16<sup>th</sup> June, 2025.

Having noted the objection filed by Dr Frank Anthony Tabone for and on behalf of Sultech & Co. (hereinafter referred to as the Appellant) on the 9<sup>th</sup> February, 2025, refers to the claims made by the same Appellant with regard to the tender of reference QLLC/08/2023 listed as case No. 2121 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Frank Anthony Tabone

Appearing for the Contracting Authority: Dr Larry Formosa

Appearing for the Recommended Bidder: Dr Daniel Calleja

Whereby, the Appellant contends that:

**Facts pertinent to this Case are the following:**

On 13/10/2023, the Contracting Authority, namely the Qala Local Council, issued a tender for the collection of bulky refuse in an environmentally friendly manner. The criterion for awarding the tender was the price.

The closing date for the submission of offers was on the 07/11/2023.

By means of a communication dated 03/02/2024, the Objector was informed by the Contracting Authority of the following:

*"Thank you for participating in this procurement procedure. However, this Entity regrets to inform you that the procurement proposal submitted by your company was not the cheapest priced offer. The procurement was recommended for award to [MJ and 000201075] for the amount of [14,535.60] excluding VAT, this being the cheapest priced offer satisfying the administrative and technical criteria."*

**Objection**

The Objector respectfully submits to this Honourable Board that the evaluation and awarding of the tender were not conducted in accordance with the law.

In light of the aforementioned issues, the appellant raises the following grievances in this Objection:

**The Preferred Bidder's bid is not compliant**

The Objector refers to the General Rules Governing Tenders, version 4.9, issued by the Department of Contracts in July 2023, specifically to Clause no. 1.1, which reads as follows:

*By submitting their tenders, tenderers are accepting that this procedure is regulated by Maltese Law, and are deemed to know all relevant laws, acts and regulations of Malta that may in any way affect or govern the operations and activities covered by the tender and the resulting contract.*

According to the requirements outlined in the Tender Dossier and the related documentation, bidders were required to provide/have a main vehicle and a backup vehicle to carry out the required services. The Waste Carrier must use vehicles approved by the Local Council and duly registered by the Environment and Resources Authority (ERA) or any other relevant authority at the time of award/contract duration.

Furthermore, bidders were required to prove that vehicles have been duly registered with the ERA to transport bulky refuse (main vehicle and backup vehicle).

The ERA fully publishes the list of all Authorised Waste Carriers in Malta & Gozo. The last accessible list was updated on 15/01/24

The name of the Preferred Bidder does not feature on the said list, implying that the vehicles provided by the preferred bidder are not registered in the name of the preferred bidder.

*That the Tender Dossier stipulates that a Bidder shall "Provide data concerning subcontractors and the percentage of works to be subcontracted. Any subcontractor proposed and disclosed at this stage shall be evaluated in line with the Exclusion and Blacklisting Criteria as per section 7(B) of these Instructions to Tenderers. Furthermore, if the sub-contractor is relied upon by the Contractor to meet the standards established in the selection criteria, apart from submitting the relevant commitments in writing, such reliance will be evaluated to verify its correctness and whether in effect these criteria are satisfied."*

In this regard, it is pertinent to refer to the ECJ judgement C-176/98 in the names "Holst Italia", [1999] ECR-1-8607, where the European Court of Justice stated the following:

*"29. Thus, where, in order to prove its financial, economic and technical standing with a view to being admitted to participate in a tendering procedure, a company relies on the resources of entities or undertakings with which it is directly or indirectly linked, whatever the legal nature of these links may be, it must establish that it actually has available to it the resources of these entities or undertakings which it does not itself own and which are necessary for the performance of the contract ..."*

Therefore, firstly, the Contracting Authority had to confirm whether it had requested the Preferred Bidder to confirm and/or outline how it intended to fulfil the tender requirements with the involvement of a third party. This query is intrinsic to the requirement outlined above.

Secondly, the Contracting Authority was duty-bound to assess and evaluate such a third party *"in line with the Exclusion and Blacklisting Criteria as per these Instructions to Tenderers. Furthermore, if the sub-contractor is relied upon by the Contractor to meet the standards established in the selection criteria, apart from submitting the relevant commitments in writing, such reliance will be evaluated to verify its correctness and whether in effect these criteria are satisfied."*

Thirdly, Following the considerations previously outlined, it is incumbent upon the Contracting Authority to rigorously ensure compliance with legal standards as mandated by the General Rules Governing Tenders. This includes a thorough examination of the legality of the engagement between the Preferred Bidder and any third party. Such scrutiny is essential, especially in light of specific regulations governing the sector,

notably Subsidiary Legislation 499.68 of the Laws of Malta, which pertains to Light Passenger Transport Services and Vehicle Hire Services Regulations. This legislation mandates strict compliance with prescribed standards for vehicle leasing arrangements, it is pertinent to highlight, without delving into specifics at this juncture, that the nature and legality of the relationship between the Preferred Bidder and third parties warrant careful evaluation to ascertain adherence to the stipulated regulatory framework. Such considerations will further result during the hearing of this case.

In light of the foregoing, and considering what will be presented at the hearing, it is the Objector's considered opinion that the preferred bidder's offer fails to comply with the tender requirements and that the Contracting Authority did not ensure strict adherence to the law and the tender specifications.

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This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on the 13<sup>th</sup> February, 2025 and its verbal submission during the hearing held on the 16<sup>th</sup> June, 2025, in that:

Contrary to Objector's submissions the adjudication is correct and the tender has been adjudicated and awarded according to the Public Procurement Regulations and the tender document and consequently this Board should reject the Objector's application AND instead confirm the Local Council's decision.

That the Qala Local Council holds that the claims put forward by the Objector are manifestly incorrect and should be discarded since during evaluation stage it has in fact strictly adhered to the law and to the tender specifications. The Council has been assured through numerous clarifications that the preferred bidder has the necessary vehicles to satisfy the tender specifications contained in the tender document. The said vehicles are also covered by the necessary ERA permits contrary to the Objector's submissions.

Furthermore, the Objector is not correct when stating that the preferred bidder will subcontract the tender to third parties.

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This Board also noted the **Recommended Bidder's Reasoned Letter of Reply** filed on the 15<sup>th</sup> February, 2025 and its verbal submission during the hearing held on the 16<sup>th</sup> June, 2025, in that:

That the Contracting Authority was correct in its decision since the tender was adjudicated and awarded according to the Public Procurement Regulations.

The Winning Bidder's application was technically compliant as per the tender document specifications. It is manifestly false the submission tendered by the Appellant that the Winning Bidder will subcontract the tender to third parties.

That the necessary vehicles satisfy the tender specifications as these are all covered by the necessary ERA permits.

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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 objector alleges non-compliance with tender specifications and regulatory obligations by the Preferred Bidder.

## **1. Tender Requirements and Legal Framework**

The Tender Dossier explicitly states that:

- Bidders must provide both a main vehicle and a backup vehicle registered and approved by the Environment and Resources Authority (ERA) or another competent authority.
- Vehicles used for the performance of the contract must be duly registered for the transport of bulky refuse, and this registration must be in place at the time of award and throughout the contract duration.
- The Tender Dossier further requires bidders to disclose any subcontracting arrangements and to substantiate such arrangements in line with the Exclusion and Blacklisting Criteria as detailed in Section 7(B) of the Instructions to Tenderers.

In terms of European case law, notably *ECJ C-176/98 Holst Italia*, the principle is well established that:

*"... where a company relies on the resources of another entity to satisfy eligibility or selection criteria, it must demonstrate that such resources are genuinely at its disposal and available for the performance of the contract."*

This principle is consistent with the need to ensure fair competition, legal certainty, and effective performance of public contracts.

## **2. ERA Registration and Non-Compliance**

The Board notes that the last published list of ERA-registered waste carriers (dated 15/01/2024) does not include the name of the Recommended Bidder. As such, there is no evidence to suggest that the Recommended Bidder owns, operates, or has disposal over vehicles registered in accordance with ERA requirements. That said, this Board is not contesting the fact that a recommended bidder cannot rely on the capacity of third parties as third party reliance is purely acceptable in the realm of public procurement as long as this satisfies the legal requirements. However, and as correctly articulated in the Court of Appeal judgement dated 16<sup>th</sup> of July, 2024 [which referred back the case before this Board] the provision of such vehicles under this tender process, casts serious doubt on the Recommended Bidder's ability to comply with the technical specifications of the tender.

## **3. Compliance with Subsidiary Legislation 499.68**

Under the Light Passenger Transport Services and Vehicle Hire Services Regulations (SL 499.68), any leasing, subcontracting, or third-party vehicle arrangement must comply with licensing, insurance, and control requirements. The legality and form of such arrangements must therefore be scrutinised and documented, particularly where the vehicles are not registered in the name of the contractor.

## **5. Conclusion and Decision**

In view of the foregoing, the Board finds that:

- The Recommended Bidder did not satisfy the mandatory requirements of the tender concerning vehicle registration and ERA authorisation.
- The Contracting Authority failed to verify the Recommended Bidder's reliance on third-party resources and did not evaluate any such arrangements in accordance with the stipulated criteria.
- This failure amounts to a serious breach of the procurement rules and the principles of transparency, equal treatment, and legality.

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

1. To uphold the objection filed by the Appellant;
2. To annul the notice of award in favour of the Recommended Bidder, dated the 3<sup>rd</sup> of February, 2024;
3. To annul the letter of rejection dated the 3<sup>rd</sup> of February, 2024 sent to the appellant;
4. To order the Contracting Authority to re-evaluate the bids in full compliance with the tender dossier, legal obligations, and jurisprudential standards, through a newly constituted Evaluation Committee;
5. To direct the Contracting Authority to ensure any resubmitted or re-evaluated bid demonstrates compliance with ERA registration, subcontractor disclosure, and vehicle usage regulations.
6. That after taking all due considerations, directs that the deposit be refunded to the Appellant.

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

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

**Dr Ana Thomas**  
**Member**