

PUBLIC CONTRACTS REVIEW BOARD

Case 2149 – 565 – Obj SS/25/1 – Street Sweeping Services in the Locality of Fgura, using Low Emission Service Vehicle

12th September, 2025

The Board,

Having noted the letter of objection filed by Dr Elian Scicluna acting for and on behalf of **WM Environmental Limited** (hereinafter referred to as the appellant) filed on the 3rd July, 2025;

Having also noted the Reasoned Letter of Reply filed by Dr Ivan Meli acting for and on behalf the **Fgura Local Council** (hereinafter referred to as the Contracting Authority) filed on the 10th July, 2025;

Having also noted the Reasoned Letter of Reply filed by Dr Jean Carl Abela acting for and on behalf **Mr Anthony Scerri** (hereinafter referred to as the Recommended Bidder) filed on the 9th July, 2025;

Having heard and evaluated the testimony of the witness Mr Wilson Mifsud (Representative of WM Environmental Limited) as summoned by Dr Elian Scicluna acting for WM Environmental Limited;

Having noted that there were no more witnesses summoned by the Contracting Authority and the Recommended Bidder;

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 11th September, 2025 hereunder-reproduced.

Minutes

Case 2149 Objection SS251 Street Sweeping Services in the Locality of Fgura, using Low Emission Service Vehicles.

The tender was issued on the 29th of January 2025, and the closing date was the 28th of February 2025.

The estimated value of the tender, excluding VAT, was €80,000.

On 3rd July 2025, WM Environmental Ltd. (2096-6527) lodged an appeal against Fgura Local Council – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

The appellant objected since the tender was not the Best Price Quality Offer..

A deposit of €400.00 was paid.

There were nine Bids.

On the 11th of September, 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 – W/M Environmental Ltd. (2096-6527).

Dr Elian Scicluna – Legal Representative.

Dr Marina Damato – Legal Representative.

Mr Wilson Mifsud – Company Representative.

Contracting Authority – Fgura Local Council.

Dr Ivan Meli - Legal representative.

Mr Clayton Cascun Portelli – Local Councillor.

Recommended Bidder – Anthony Scerri (16712921).

Dr Jean Carl Abela -- Legal Representative. (online).

Mr. Anthony Scerri – Company Representative. (online).

Opening Statements

Dr Vincent Micallef, Chairman of the Public Contracts Review Board, welcomed the parties present: the Appellant, WM Environmental Limited; the Contracting Authority, Fgura Local Council; and the representative of the Recommended Bidder, Mr. Anthony Scerri.

Initial Submissions

Initial Submissions by the Appellant

Dr. Elian Scicluna explained that the objection is based on calculations, as the bid appears abnormally low. Referring to Page 37, Section 4.2.5, she quoted:

“The contractor must provide services of at least four full-time employees or equivalent.”

She argued that this was a requirement, not a guideline. However, in the Council’s submissions, it was treated merely as a guideline.

A contract circular, based on the 2025–2030 collective agreement, states that the rate for street sweepers is €8.72 per hour, excluding VAT. Mr. Scerri submitted a rate of €6.15, which, according to the Appellant, is insufficient to cover all requirements. This, she argued, creates a risk of precarious work. Furthermore, the awarded tender, as accepted by the Council, would not cover equipment, dumping fees, or management costs. Despite this, the Council did not seek clarification, but the Appellant insisted that there is clear doubt.

WM Environmental Ltd. calculated that employing four full-time workers for 2,080 hours per year at €8.72 per hour over four years would total €290,201.60. In contrast, Mr. Scerri offered €271,960.32, which the Appellant argued was abnormally low.

Board member Dr. Ana Thomas asked for the reference of Contract Circular No. 2 of 2025, titled “*Award of Service Contracts – Specified Rate 2025*”, as quoted in the objection.

Initial Submissions by the Contracting Authority (Fgura Local Council).

Dr Ivan Meli emphasised that their submission letter addressed all arguments raised. He explained that the Council always follows the same fair procedure.

Regarding clause 4.2.5, Dr Meli clarified that the term “*equivalent*” allows flexibility, meaning the requirement could be satisfied through part-time employees, not strictly four full-time workers.

He further explained that Circular 2 of 2025 sets two rates: €6.15 as the payment rate for employees, and €8.72 as the contractor’s rate. The Appellant, he argued, had miscalculated. Mr. Scerri’s tender complied with public procurement rules, and therefore the award should stand.

Initial Submissions by the Recommended Bidder (Mr. Anthony Scerri).

Dr Jean Abela stated that the Appellant’s objection was based on an incorrect calculation. The Appellant assumed that wages would fall below the legal minimum salary. However, this was simply an arithmetic error.

Mr Scerri’s bid was based on employing three full-time workers at €6.15 per hour, plus one contractor at €8.72 per hour. The Appellant incorrectly assumed all four would be paid at €8.72 per hour. According to Dr Abela, the correct figure amounted to €226,054, which is legally compliant and satisfies the requirements of the partnership.

Witness.

Mr Wilson Mifsud (ID No. 527284M).

Mr Mifsud emphasised that each employee effectively costs €8.72 per hour once leave, sick leave, national insurance, wages, and bonuses are taken into account. He noted that the Department of Industrial and Employment Relations (DIER) issues an annual circular to guide contractors holding public contracts.

Final Submissions.

Final Submissions by the Appellant (Dr Elian Scicluna)

Dr Scicluna reiterated that the calculations were correct and that the offer should be considered abnormally low. She requested that the award be annulled.

Final Submissions by the Contracting Authority (Dr Ivan Meli)

Dr Meli stated that all arguments were already submitted in writing and that the Council would abide by the Board's decision.

Final Submissions by the Recommended Bidder (Dr Jean Abela)

Dr Abela stressed that there must be a distinction between the rate applicable to employers and that applicable to employees. He confirmed that he had consulted DIER before preparing their response.

Conclusion of the Hearing.

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

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 11th September, 2025.

Having noted the objection filed by Dr Elian Scicluna for and on behalf of WM Environmental Limited (hereinafter referred to as the Appellant) on 3rd July, 2025, refers to the claims made by the same Appellant with regard to the tender of reference 565 – Obj SS/25/1, listed as case No. 2149 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Elian Scicluna
Appearing for the Contracting Authority:	Dr Ivan Meli
Appearing for the Recommended Bidder:	Dr Jean Carl Abela

Whereby, the Appellant contends that:

Appellant feels aggrieved by this decision and hereby lodges this appeal for your consideration on the basis that the Evaluation Committee erred in determining that WM's offer was not the lowest-priced offer meeting the administrative and technical criteria, particularly in a context whereby the preferred bidder's offer is abnormally low.

WM firmly believes that the preferred bidder's tendered offer should have been disqualified since it is abnormally low. This conclusion is based on the following reasoning:

- According to Section 3, Article 4.2.5 (page 37) of the tender dossier, the Contractor is required to provide the services of at least four (4) full-time employees or equivalent. A full-time employee is defined as working 40 hours a week, adding up to a total of 2,080 hours per year.
- As stipulated in Contracts Circular No. 02/2025, the minimum hourly rate payable to contractors for the year 2025, based on the Collective Agreement 2025-2030 for Street Sweepers, is €8.72 per hour (excluding VAT).
- The Financial Bid Form, under Item A, requested a monthly fee for the provision of street sweeping services over a 48-month period (4 years). Based on the minimum requirement of four full-time employees, the minimum total cost over four years should be calculated as follows:

$$4 \text{ full-time employees} \times 2,080 \text{ hours/year} \times €8.72/\text{hour} \times 4 \text{ years} = €290,201.60$$

- It therefore follows that the preferred bid does not even cover employment costs with the consequences and implications this involves.
- In addition to this, the Financial Bid Form under Item B requested a separate fee for all other expenses required to perform the service. These may include, but are not limited to, costs for fuel or energy, dumping fees, management and administrative charges, materials, and other operational expenses. While it is not possible to precisely calculate this additional fee for the recommended bidder, its inclusion further supports the view that the price offered of €271,960.32 is abnormally low,

According to articles 243 and 244 of S.L. 601.03 the Contracting Authority is bound to require the economic operator to explain the price or costs proposed in the tender where it appears to be abnormally low. This point is also being made in the context of the '*Contracts Circular N° 02/2025' titled 'Award of Service Contracts: Pegged Rates: 2025'* intended to mitigate precarious work conditions, especially when such services are rendered to the Contracting Authorities or Entities as stipulated therein, as is the case in question.

At this juncture, appellant refers to the fact that Malta has strict rules protecting workers' rights, including payment of the minimum applicable wage, bonuses, leave, social security contributions, etc. A bid so low that it cannot realistically cover these, is prima facie non-compliant.

This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on the 11th July, 2025 and its verbal submission during the hearing held on the 11th September, 2025, in that:

The Contracting Authority has duly considered the contents of the objection and hereby submits its formal response as follows:

1. Nature of Tender and Award Criteria

The tender was published as a global price tender for the provision of street sweeping services over a 48-month period. The Financial Bid Form explicitly required bidders to quote a monthly global fee, covering all costs necessary to fulfil the contractual obligations. This includes all human resources, operational inputs, consumables, equipment, and ancillary expenses.

Section 3, Article 4.2.5 of the tender dossier refers to a minimum staffing expectation of four (4) full-time employees or equivalent. It is to be highlighted that this provision is intended solely to serve as an indicative reference point to ensure adequate resourcing for the required service level. It does not constitute a prescriptive or binding pricing formula.

Accordingly, bidders were afforded full discretion to allocate their resources, whether through full-time staff, part-time staff, or equivalent contractual arrangements, provided the minimum service levels are maintained.

2. Evaluation of the Tender

The offer submitted by WM Environmental Ltd. was evaluated as technically compliant and meeting the minimum administrative and technical requirements.

However, in line with the published Best Price-Quality Ratio (BPQR) evaluation methodology, the offer submitted by Mr Anthony Scerri achieved a higher overall score, primarily due to the lower global price tendered, whilst remaining technically compliant. As such, the award recommendation was made strictly in accordance with the evaluation criteria and applicable procurement regulations.

It is legally impermissible for the Contracting Authority to alter or depart from the pre-established evaluation methodology in favour of subjective or hypothetical cost calculations introduced post-evaluation.

3. Allegation of an Abnormally Low Offer

a. Incorrect Assumption of Fixed Staffing and Cost Structure

The Appellant's calculation is based on the erroneous assumption that the successful tenderer is required to staff exactly four full-time employees, each working 2,080 hours per year over four years. This assumption disregards the discretionary and indicative nature of the staffing reference in Article 4.2.5.

The global nature of the tender permits resource flexibility and operational efficiencies, and there is no legal or contractual basis to require bidders to price their offer in line with the specific assumptions presented by the Appellant.

b. No Prima Facie Evidence of Unsustainable Pricing

The Evaluation Committee, after reviewing the bid submitted by the recommended tenderer, found no *prima facie* evidence indicating that the offer was unsustainable or that it would preclude the contractor from meeting its obligations, including those related to employment law.

In accordance with regulations 243 and 244 of Subsidiary Legislation 601.03, the obligation to seek clarifications arises only where there are objective grounds to believe that an offer is abnormally low in light of the services to be rendered. No such grounds were found in this case.

c. Post-Award Monitoring and Enforcement

Compliance with applicable labour laws, including adherence to Contracts Circular No. 02/2025, is a matter for contractual enforcement and ongoing monitoring, not a precondition to bid admissibility, unless clear non-compliance is established *ex ante*, which is not the case here.

The Contracting Authority has robust mechanisms in place to ensure that all obligations, including those relating to wage conditions and employment standards, are met by the awarded contractor during the execution of the contract.

4. Conclusion

In light of the foregoing, the Contracting Authority respectfully submits that the contract was awarded in full compliance with the applicable procurement legislation, the terms and conditions of the tender dossier, and the established evaluation methodology. The evaluation process was conducted fairly, transparently, and in strict adherence to the principles of equal treatment, non-discrimination, and proportionality as required by law.

The allegations raised by the Appellant concerning the allegedly abnormally low nature of the awarded offer are unfounded both in fact and at law. The Appellant's argument is premised on a misinterpretation of the tender requirements, specifically the reference to staffing levels, which was clearly intended to serve as an indicative benchmark rather than a mandatory or prescriptive cost basis.

Furthermore, there was no *prima facie* indication during the evaluation process to warrant the application of regulation 243 of S.L. 601.03, nor was there any evidence to suggest that the awarded bid was unsustainable or non-compliant.

This Board also noted the **Recommended Bidder's Reasoned Letter of Reply** filed on the 11th July, 2025 and its verbal submission during the hearing held on the 11th September, 2025, in that:

The Recommended Bidder has duly considered the contents of the objection and hereby submits its formal response as follows:

We cordially submit that the objection letter filed by WM Environment Limited (C 53505) is unfounded at fact and at law and consequently should be rejected and the request contained dismissed due to the following reasons:

1. *Incorrect Interpretation and calculation of the Contracts Circular no. 2/2025.*

The appellant base their argument on an incorrect calculation, alleging that the winning offer is not in accordance with circular No.2/2025.

The appellant states the minimum total cost of the salaries/wages of the employees over four years should be calculated on the following:

$$4 \text{ full-time employees} \times 2,080 \text{ hours/year} \times 8.72 / \text{hour} \times 4 \text{ years} = \text{€}290,201.60$$

The above calculation put forward by the appellant is incorrect. The hourly rate of €8.72 is only payable to the contractor. Employees are to be paid €6.15 per hour as established by circular no 2/2025, which such consideration has been totally left out by the appellant.

Therefore, the correct way to establish the minimum wage payable to 4 full time employees, with one of the four being the contractor should be as follows:

$3 \text{ full-time employees} \times 2,080 \text{ hours/year} \times 6.15 / \text{hour} \times 4 \text{ years} = \text{€}153,504$

$1 \text{ contractor} \times 2,080 \text{ hours/year} \times 8.72 / \text{hour} \times 4 \text{ years} = \text{€}72,550.40$

$\text{Total} = \text{€}226,054.40$

The winning bid put forward by Anthony Scerri in regards to the total cost of 4 employees was calculated at €230,400, which is above the minimum of €226,054.40 as explained above. A copy of bill of quantities which was submitted at tendering stage is being submitted for reference.

Therefore, the winning bid is not an abnormally low offer and is in line with all technical and legal requirements.

Under procurement regulations (Articles 243 and 244 of S.L. 601.03), the Contracting Authority has the discretion to seek clarifications if a bid appears abnormally low under the given circumstances. It is clear that the Evaluation Committee reviewed the winning bidder's global price and taking into account the flexible nature of the tender structure, it is clear that the bid was technically compliant and is not an abnormally low offer.

2. Award Criteria & Nature of Tender

Notwithstanding the above, the tender was issued as a global price tender for the delivery of a specified service. As outlined in the tender dossier, the Financial Bid Form required bidders to propose a single monthly global fee for the full 48-month duration. This fee was to cover all necessary resources, equipment, personnel, and operational costs needed to meet the service requirements.

While Section 3, Article 4.2.5 of the tender dossier indicates that the contractor must provide services equivalent to at least four (4) full-time employees to maintain the expected service level, this reference served as a guideline for the minimum level of service. It was not intended to be a separate or mandatory priced item. Bidders retained the flexibility to allocate their resources in any manner they found appropriate, provided they met the stipulated service standards.

The winning bid offer was assessed as technically compliant, meeting all minimum requirements, including the indicative staffing level. Based on the published award criteria, the selected winning bidder also submitted a technically compliant proposal but at a lower global price. As a result, the bid received a higher overall score in the price-quality ratio assessment.

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.

Summary of the Appellant's Grievance/s

The Appellant contends that the Contracting Authority erred in its assessment of tenders, and that the recommended offer ought to have been disqualified on the ground that it is abnormally low.

The gravamen of the Appellant's complaint is as follows:

1. That Section 3, Article 4.2.5 of the tender dossier obliges the contractor to engage at least four (4) full-time employees (or equivalent), defined as working forty (40) hours weekly, i.e., 2,080 hours annually.
2. That, under Contracts Circular No. 02/2025, the applicable hourly rate for street sweepers is €8.72.
3. That on this basis the absolute minimum labour cost over the full four-year term amounts to €290,201.60, to which must be added further operational and administrative costs.
4. That since the recommended bid totals €271,960.32, it does not suffice even to cover basic wage obligations, and is thus *prima facie* unsustainable.
5. That under Regulations 243 and 244 of Subsidiary Legislation 601.03 the Contracting Authority was bound to investigate and seek clarifications, failing which the award is irregular.

The Appellant therefore prays that the decision be annulled, and the tender awarded to it as the lowest admissible offer.

Summary of the Contracting Authority's Reply

The Contracting Authority resists the appeal on the following principal grounds:

1. That the tender was issued on a global price basis, with bidders bound to quote a single monthly fee encompassing all costs, including personnel, consumables, equipment, and overheads. The indicative reference to four employees in Article 4.2.5 was never intended as a mandatory costing formula.
2. That the evaluation was carried out under the pre-published Best Price-Quality Ratio methodology, under which the recommended bidder secured the highest overall score.
3. That the Appellant's arithmetical assumptions are misplaced; bidders were not required to adopt the same staffing model or cost structure.
4. That no *prima facie* evidence arose of an unsustainable offer; therefore, the trigger for requesting explanations under Regulations 243 and 244 did not arise.

5. That post-award compliance with employment laws and circular requirements is secured by contractual enforcement and monitoring mechanisms, not by pre-emptive disqualification absent clear evidence of non-compliance.

The Contracting Authority accordingly maintains that the award is lawful, transparent, and non-discriminatory.

Summary of the Recommended Bidder's Reply

The Recommended Bidder, Mr Anthony Scerri, likewise prays for dismissal of the appeal, contending *inter alia*:

1. That the Appellant's calculation misconstrues Contracts Circular No. 02/2025. The correct interpretation is that employees are to be remunerated at €6.15 per hour, whereas the contractor is entitled to €8.72 per hour.
2. That, applying the proper formula, the minimum cost of four full-time equivalents (three employees at €6.15, plus one contractor at €8.72) totals €226,054.40, which is comfortably below the recommended bid price of €230,400. Thus, the recommended bid is not abnormally low.
3. That the tender structure, being global price, permits flexibility in resource allocation. Provided service standards are met, bidders retain discretion in how staffing is organised.
4. That the recommended offer was evaluated as fully compliant both technically and financially, and rightfully emerged as the most advantageous under the BPQR methodology.

Considerations of the Board

The Board has given anxious scrutiny to the record and makes the following observations:

1. On the Interpretation of Article 4.2.5 and the Word "Equivalent"

The Board must, however, register its concern with the wording of Article 4.2.5 of the tender dossier. The provision in question obliges the contractor to provide the services of "*at least four (4) full-time employees or equivalent*". The use of the word *equivalent* was unfortunate, for it inevitably gave rise to an interpretative latitude. What was intended as an assurance of adequate service resourcing became instead a matter of debate as to whether the requirement imposed a fixed and invariable staffing cost or whether flexibility was permitted.

The Board considers that this ambiguity could, and indeed ought, to have been clarified prior to submission of tenders. Regulation 262 of the Public Procurement Regulations grants economic operators the right to seek clarifications on tender provisions during the pre-tendering stage. The Appellant, if genuinely in doubt

as to the meaning and effect of “equivalent”, was at liberty to raise the matter at that juncture. Having chosen not to do so, it cannot now rely upon its own interpretation to impugn the outcome.

Accordingly, the Appellant’s reliance on a strict mathematical model of four full-time employees, each remunerated at the pegged contractor rate, is misplaced and does not establish that the Contracting Authority reached a wrong conclusion.

This ambiguity is further illuminated by the second sentence of the same clause, which provides: “*Without prejudice to the level of cleanliness required, lack of employees engaged is not an excuse for substandard work*”. The natural implication is that the reference to four full-time employees was framed as guidance, not as an immutable requirement. The emphasis is placed squarely on the outcome, namely, the maintenance of the required cleanliness standards, rather than on the precise number of employees deployed.

In consequence, the Board finds that the Evaluation Committee was entitled to interpret the staffing reference as indicative rather than prescriptive. One cannot therefore maintain that the Committee’s interpretation was legally flawed.

Again, whilst the Board considers that the drafting of Article 4.2.5 left scope for improvement, it does not follow that the Contracting Authority reached the wrong conclusion, still less that the award was unlawful.

2. On the Allegation of Abnormally Low Pricing

The Appellant predicates its claim of abnormality entirely upon the assumption that the successful tenderer was obliged to engage four full-time employees, each remunerated at €8.72 per hour, throughout the forty-eight-month contract period. By reference to the above discussion under *Interpretation of Article 4.2.5 and the Word “Equivalent”*, this assumption is fundamentally misconceived.

It follows that the Appellant’s reliance on a rigid, mathematically calculated staffing cost as a benchmark for abnormality is legally unsustainable. The Evaluation Committee was entitled to interpret the staffing reference in the tender dossier as indicative, allowing the Recommended Bidder to optimise resource deployment and operational efficiencies. Consequently, the Appellant’s contentions do not demonstrate that the Committee acted unlawfully, nor that the award decision is vitiated.

On the Applicability of Regulations 243 and 244 of S.L. 601.03

These provisions oblige the Contracting Authority to seek clarifications only where an offer *appears* abnormally low. This Board is satisfied that no such objective appearance arose in the present case. The Evaluation Committee acted within its lawful discretion in refraining from invoking the abnormal-low-bid mechanism.

On Post-Award Compliance

The Board accepts the Contracting Authority's assurance that employment law compliance, including adherence to circular pegged rates, is a matter for enforcement during execution. There is no evidence before this Board of imminent or inevitable breach.

Conclusive Decision of the Board

For the reasons articulated above, the Board finds as follows:

1. The tender was issued on a global price basis, with the staffing reference in Clause 4.2.5 intended solely as an indicative benchmark to ensure adequate service provision. The term *equivalent* and the accompanying guidance regarding cleanliness standards permitted operational flexibility, thereby allowing contractors to determine their own resource allocation, provided that service levels were maintained.
2. The Appellant's assertion that the Recommended Bidder's offer is abnormally low is premised upon a misinterpretation of the tender dossier and a rigid mathematical staffing model which the tender did not require. The Evaluation Committee's determination that the Recommended Bidder's offer is compliant and financially sustainable is fully supported by the tender terms, the applicable legislation, and the submitted evidence.
3. Regulations 243 and 244 of S.L. 601.03 provide for clarification of abnormally low offers only where objective evidence indicates such abnormality. The Evaluation Committee acted within its lawful discretion, and there was no objective basis to seek additional clarification from the Recommended Bidder.
4. The ambiguity inherent in the use of the term *equivalent* could, and should, have been addressed by the Appellant during the pre-tender clarification stage under Regulation 262. Its failure to do so cannot now serve as a ground for impugning the evaluation process.
5. The Contracting Authority applied the evaluation methodology strictly in accordance with the pre-published criteria, in full compliance with the principles of transparency, equal treatment, proportionality, and non-discrimination. There is no evidence of procedural impropriety, legal error, or arbitrariness.

Accordingly, the Board concludes that the appeal is without merit. Therefore, the appeal is hereby being dismissed in its entirety.

The Board,

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

- a. Not uphold Appellant's Letter of Objection and contentions;

- b. Confirms the decision of the Evaluation Committee in its entirety;
- c. Directs that the deposit paid by Appellant not to be reimbursed.

Dr Vincent Micallef
Chairman

Mr Lawrence Ancilleri
Member

Dr Ana Thomas
Member