

PUBLIC CONTRACTS REVIEW BOARD

Case 2183 – Objection – NLC 02/2025 – Services Tender for the Cleaning and Upkeep of Public Conveniences in Naxxar with a Reduced Environmental Impact

19th November, 2025

The Board,

Having noted the Letter of Objection filed by Dr Daniel Cutajar and Dr Franco Galea acting for and on behalf of **Simply Clean Limited**, (hereinafter referred to as “*the Appellant*”) filed on the 26th September, 2025;

Having also noted the Reasoned Letter of Reply filed by Dr Silvan Pulis and Dr Herman Mula acting for and on behalf of the **Mr Sandro Caruana** (hereinafter referred to as “*the Recommended Bidder*”) filed on the 3rd October, 2025;

Having also noted the Reasoned Letter of Reply filed by Dr Larry Formosa acting for and on behalf of the **Naxxar Local Council** (hereinafter referred to as “*the Contracting Authority*”) filed on the 8th October, 2025;

Having noted that the Appellant did not produce any witnesses;

Having noted that the Contracting Authority did not produce any witnesses;

Having heard and evaluated the testimony of the witness Mr Sando Caruana as duly summoned by Dr Herman Mula acting for and on behalf of 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 18th November, 2025 hereunder reproduced.

Minutes

Case 2183 601- Objection – NLC 02/2025 – Services Tender for the Cleaning and Upkeep of Public Conveniences in Naxxar with a Reduced Environmental Impact.

The tender was issued on the 6th of June 2025, and the closing date was the 7th of July 2025.

The estimated value of the tender, excluding VAT, was €20,000

On the 26th of September, 2025, Simply Clean Limited (C101719) lodged an appeal against Naxxar Local Council – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement

Regulations. The appellant objected since the tender was not the cheapest priced offer satisfying the administrative and technical criteria.

A deposit of €400.00 was paid.

There were eight Bids.

On the 18th of November 2025, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Dr Maria Cardona and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Simply Clean limited. (C101719).

Dr Daniel Cutajar – Legal Representative. (online).

Mr. Melchior Dimech – Company Representative. (online).

Contracting Authority – Naxxar Local Council.

Dr Larry Formosa – Legal Representative.

Mr. Paul Gatt – Executive Secretary.

Mr. Arthur Perici – Evaluator.

Recommended Bidder – Sandro Caruana.

Dr Herman Mula – Legal Representative.

Mr. Sandro Caruana – Company representative.

Opening Statements.

Dr Vincent Micallef, Chairman of the Public Contracts Review Board, welcomed the parties present — namely, the Appellant, Simply Clean Limited, the Contracting Authority, Naxxar Local Council and the Recommended Bidder, Sandro Caruana.

Initial Submissions.

Initial Submissions by Dr. Daniel Cutajar (for the Appellant).

Dr Cutajar stated that the recommended bidder did not possess licence 452.130 under Article 40 of the Tender Dossier. Mr Caruana objected and declared that he would carry out the work himself. In Article 4 of the Terms of Reference, specifically 4.2.3, most of the required tasks must be performed twice daily, and it would be burdensome to complete everything without additional help. Article 6.1.2 requires that the work be carried out even if Mr Caruana were to fall ill. The Naxxar Local Council acknowledged that there had been a shortcoming in the evaluation of the tender.

Initial Submissions by Dr. Larry Formosa (for the Contracting Authority).

Dr Formosa stated that they would rely on the documents presented.

Initial Submissions by Dr. Herman Mula (for the Recommended Bidder).

Dr Mula argued that there was no clause requiring a licence ‘Dire on Pain of Nullity’. The clause in question was entirely different and not the same as the one the appellants were referring to. Dr Mula noted that the subject of the tender was a public toilet, and his client was capable of carrying out all the required work on his own. The client would testify.

The Chairman, Dr Vincent Micallef, made the following two verbali:

“L-appellant qiegħed jiddikjara li m’ghandux provi xi jressaq, salv, għad dokumenti evidenzjali, li gew intavolati flimkien mar-rikors promotur tal-appell. L-appellant qiegħed jiddikjara li qiegħed jagħlaq l-istadju tal-provi tiegħu.”

“L-Awtorita Kontraenti tiddikjara illi m’ghandiex provi xi tressaq, b’dan illi qed tghalaq l-istadju tal-provi tagħha u se tirmetti ruhha għal atti ntavolati.”

Witness.

Mr Sandro Caruana (ID 354876M) — Summoned by Dr. Herman Mula.

Mr Caruana stated that this was the same public toilet he had maintained six years earlier, and he had managed it on his own. The public toilet has two female cubicles and two male cubicles. Mr Caruana cleaned the facility twice a day, and it took him about 45 minutes each time.

Cross-Examination by Dr. Daniel Cutajar.

Mr Caruana stated that he works three hours a day as a salesman, from 08:00 to 11:00. Dr Mula objected that the cross-examination should focus on the case. The Chairman asked Dr Cutajar to remain within the scope of the case.

Mr Caruana added that if he were ill, his family would assist him.

Final Submissions.

Final Submissions by Dr. Daniel Cutajar.

Dr Cutajar remarked that if the Local Council needed the witness at a particular time—given that the preferred bidder had to attend the public toilet twice daily—and since he had another job, it would be difficult for him to meet the requirements on his own.

Final Submissions by Dr. Larry Formosa.

Dr Formosa stated that the Naxxar Local Council relied on the documents submitted and that the evaluation had been carried out accordingly.

Final Submissions by Dr. Herman Mula.

Dr Mula argued that although the recommended bidder worked three hours a day, he would still have sufficient time to clean one public toilet. The main issue that could arise would be a problem with the water supply; however, the witness's job was not that of a plumber. No technical work was involved, and any family member could help in the event of illness. From a procedural perspective, there was no requirement that the bidder hold a Dire's licence on Pain of Nullity.

Conclusion of the Hearing.

With no further arguments presented, Chairman 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 18th November, 2025.

Having noted the objection filed by Dr Daniel Cutajar and Dr Franco Galea for and on behalf of Simply Clean Limited (hereinafter referred to as "*the Appellant*") on the 26th September, 2025, refers to the claims made by the same Appellant with regard to the tender of reference *NLC 02/2025 – Services Tender for the*

Cleaning and Upkeep of Public Conveniences in Naxxar with a Reduced Environmental Impact listed as case No. 2183 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Daniel Cutajar
Appearing for the Contracting Authority:	Dr Larry Formosa
Appearing for the Recommended Bidder:	Dr Herman Mula

Whereby, **the Appellant** contends that:

The sole criteria for the award of the tender was "*the cheapest priced offer satisfying the administrative and technical criteria.*" The Appellant's application for the Contract NLC 02/2025 - "*Services Tender for the Cleaning and Upkeep of Public Conveniences in Naxxar with a Reduced Environmental Impact*" was rejected by the Department of Contracts in a letter sent by them on the 16th September 2025, (attached and marked as *Document A*).

The reason given by the Department for the rejection of the Appellant's offer was due to the fact that it "*was not the cheapest priced offer satisfying the administrative and technical criteria.*"

Consequently, the Appellant was ranked 8th in the evaluation of offers for the Contract.

Instead, the Department of Contracts granted the Contract with reference NLC 02/2025 to "*Sandro Caruana for the amount of €7,200 excluding VAT, this being the cheapest priced offer satisfying the administrative and technical criteria.*"

The Appellant feels aggrieved by such a decision of the Contracting Authority and is availing itself of the right granted to it in terms of the law and is filing an objection in regard to the aforementioned decision.

Objections

The Appellant respectfully objects to the award of this tender in light of the fact that the selected applicant is not in compliance with the terms of the tender contract under *Article 40* which states the following:

"The Contractor shall be bound to conform and comply with the Employment and Industrial Relations Act (CAP 452), its Subsidiary Legislations (including the Employment Agencies Regulations S.L. 452.130), and any other subsequent Legal Notices that may come into force, as well as any other

national legislations, regulations, standards and codes of practice, in force during the execution of the contract, as applicable to the Contractor's particular operating situation and nature of activities."

Reference is made to *Article 3(6)* of the above-mentioned *Employment Agencies Regulations (CAP 452.130)* explicitly states that "no user undertaking shall seek employment services from any provider unless such provider is a licensed employment agency or employment business in accordance with these regulations", and that any breach constitutes an offence under the same regulations.

It must therefore be stressed that, as shown in the attached *Document B*, the winning tenderer does not appear on the licensed agency list. This omission constitutes a direct violation of *S.L. 452.130*, which, in turn, means that these offers could not have satisfied the mandatory "administrative and technical criteria". Since the award notice itself specifies that the successful offer would have to be "the cheapest priced offer satisfying the administrative and technical criteria," any failure to comply with licensing requirements automatically invalidates eligibility under the sole stated criterion.

In view of the above, and whilst reserving the right to make further submissions and present additional evidence, the Appellant respectfully requests this Honourable Board to revoke the decision stipulated in the letter sent by the Department of Contracts, dated the 16th September, 2025 to reject its offer for Contract *NLC 02/2025 for the Services Tender for the Cleaning and Upkeep of Public Conveniences in Naxxar with a Reduced Environmental Impact*.

Alternatively, the Appellant requests the Board to issue such declarations, orders, or directives as it may deem appropriate in relation to the procurement process concerning the tender in question.

With a reservation for the expenses incurred by the Appellant.

This Board also noted the **Recommended Bidder's Reasoned Letter of Reply** filed on the 3rd October, 2025 and its verbal submissions during the hearing held on the 18th November, 2025, in that:

Whereas Simply Clean Limited (C-101719) (hereinafter the "*Appellant company*" or "*Objector*") has filed an objection letter in view of the award of the above-mentioned tender for which Sandro Caruana, hereinafter the "*Respondent*" is responding in the following.

Objections

The Objector challenges the award of the tender to Sandro Caruana on the ground, that the selected applicant is not in compliance with the terms of the tender under Article 40.

Article 40: Compliance with local Employment Regulations

The Contractor shall be bound to conform and comply with the Employment and Industrial Relations Act (CAP 452), its Subsidiary Legislations (including the Employment Agencies Regulations S.L. 452.130), and any other subsequent Legal Notices that may come into force, as well as any other national legislations, regulations, standards and codes of practice, in force during the execution of the contract, as applicable to the Contractor's particular operating situation and nature of activities.

The objector made reference to *Article 3 (6) of Subsidiary Legislation 452.130* which states that:

(6) No user undertaking shall seek employment services from any provider unless such provider is a licensed employment agency or employment business in accordance with these regulations. Any person who, during any ongoing investigation or process undertaken in virtue of these regulations, is found to be in breach or failing to comply with the provisions of this sub-regulation shall be guilty of an offence under these regulations.

Whereas the objector points out that Mr Sandro Caruana is not a licensed agency, since a [sper][recte] the Objector this omission constitutes a direct violation of *SL 452.130*.

Whereas on the above the objector requested this Honourable Board to revoke the decision stipulated in the letter sent by the Department of Contracts, dated 16th September, 2025.

Submissions by Sandro Caruana

Whereas, first of all the Respondent makes reference to *Section 3 – Terms of Reference*, which explicitly states that the service can be delivered by the Contractor himself:

6. Requirements

6.1 Personnel and Key Experts

6.1.1. Key experts

The Service shall be delivered either by the Contractor himself or else by engaging the required personnel

Whereas the Respondent is not a licensed agency, in fact the tender was submitted in the name of Sandro Caruana as the name of Tenderer since as provided in *Section 6.1.1*. the Service can be delivered by the Contractor himself and in fact Mr. Caruana will be performing the services outlined in this tender himself.

Whereas it is important to clarify that the services offered by Mr. Sandro Caruana do not fall within the definition outlined in the *Subsidiary Legislation 452.130, Employment Agencies Regulations*. Specifically, the scope of Mr. Caruana's services does not meet the criteria associated with the activities of an '*Employment Agency*' or '*Employment Business*' as regulated under the aforementioned legislation.

Accordingly, Mr. Caruana's engagement in this context is outside the regulatory requirements set for employment agencies or businesses, as his services do not involve the recruitment of persons for employment, functioning as a temporary work agency, or operating as an outsourcing agency in Malta therefore and in addition to what is submitted above, the reference made by the objector to non-adherence with SL 452.130 is unfounded. In fact, Public tenders strictly asking for the DIER licence within the tender document are not resting upon Article 40 as this does not bind the tenderer to have such a licence, but are putting a more specific clause which reads the following:

"(A) Eligibility Criteria

In case of subcontracting, in line with the Employment Agencies Regulations S.L. 452.130, Economic Operators operating an Employment Agency or Employment Business shall be in possession of a Valid licence issued by the Department for Industrial and Employment Relations (DIER), for a period of two (2) years beginning from the date specified in the licence for its commencement. The said licence shall specify if the activity in Malta of the Employment Agency/Business is:

(i) to render one (1) or both of the following activities:

- 1. Temporary Work Agency and/ or*
- 2. Outsourcing Agency.*

Economic Operators shall submit a Self-Declaration whereby they declare that should they be the Recommended Awardee, prior to Contract Signing, they shall be in possession of a Valid or Conditional Licence, issued in accordance with the Employment Agencies Regulations (S'L.452.130), to operate an Employment Agency or Employment Business. Such Self-Declaration shall also specify that during Contract Execution Stage of the Procurement/Concession Procedure, Economic Operators (in their capacity as Contractors) shall, prior to the expiry of a valid Licence, renew the licence for further periods of two (2) years. Accordingly, the signed and dated Contract Agreement shall be accompanied by a copy of the said License and any other documentation as may be requested. For avoidance of doubt, it is

being clarified that the Authority/Entity responsible for the Procurement/Concession Procedure shall not endorse the Contract Agreement if the aforementioned copy of the Licence is not submitted. Economic Operators shall also commit to adhere to any timeframes imposed by the Authority/Entity responsible for the Procurement/Concession Procedure vis-à-vis the submission of a Valid or Conditional Licence, issued in accordance with the Employment Agencies Regulations (S.L. 452. 130). Additional information on such licences may be viewed from the Department for Employment and Industrial Relations' Employment Agencies portal (<https://employmentagencies.gov.mt/#/en/home>)"

Therefore, since the above quoted clause was not included in the tender document the objectors claim is as explained above unfounded in facts and at law.

Now therefore, whilst reserving the right to put forward any other oral or submissions in writing or evidence in furtherance to this reply, the respondent are cordially and with respect requesting this Honourable Board to reject *in toto* the requests put forward by the appellant

This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on the 8th October, 2025 and its verbal submissions during the hearing held on the 18th November, 2025, in that:

While the Contracting Authority maintains that the tender evaluation was conducted in good faith and in accordance with the criteria established in the tender dossier, it has noted that certain regulatory provisions invoked by the objector may not have been expressly considered at evaluation stage. In the spirit of transparency and procedural fairness, the Council does not oppose the reopening of the evaluation process insofar as this serves to ensure full compliance with the applicable *Public Procurement Regulations*.

Without prejudice to the foregoing the Contracting Authority reserves the right to submit further explanations or documentation during the hearing as may be required.

Accordingly, it is respectfully requested that the Board take note of the Council's position and issue such directions as it may deem appropriate in the circumstances.

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.

This Board has considered the objection filed by Simply Clean Limited regarding the award of Contract *NLC 02/2025*, which concerns the provision of cleaning and upkeep services for public conveniences in Naxxar with a reduced environmental impact.

The crux of the objection lies in the contention that the successful tenderer, Mr Sandro Caruana, did not satisfy the administrative and technical criteria stipulated in the tender documents, specifically by failing to hold a licence under the *Employment Agencies Regulations (S.L. 452.130)* as purportedly required under *Article 40* of the tender conditions. The Appellant maintains that this omission renders the award invalid, arguing that non-compliance with the statutory licensing requirement precludes the Respondent from being considered the "*cheapest priced offer satisfying the administrative and technical criteria*," the sole criterion for award according to the tender dossier.

The Respondent contests this assertion, clarifying that the services tendered are to be personally performed by him, and thus do not fall within the statutory definition of services provided by an employment agency or employment business. *Section 6.1.1* of the tender expressly permits the service to be delivered either by the Contractor personally or by engaging the requisite personnel, and the Respondent asserts that the services in question will be executed directly by him. Accordingly, the Respondent contends that the licensing requirements referenced by the Appellant are inapplicable in the present circumstances, as the scope of *S.L. 452.130* pertains to undertakings that provide employment services to third parties rather than services personally delivered by the contractor himself. The Respondent further submits that the tender documents do not impose a universal requirement for an employment agency licence, but rather such a requirement is triggered only in cases of subcontracting or where the tenderer functions as an employment agency.

Board's Considerations and Analysis

The Board has carefully examined the relevant statutory and contractual framework. *Article 40* of the tender obliges the Contractor to comply with the *Employment and Industrial Relations Act* and its subsidiary legislation, including *S.L. 452.130*. *Article 3(6)* of the *Employment Agencies Regulations* provides that no user undertaking shall seek employment services from any provider unless such provider is a licensed employment agency or business.

Notably, the tender dossier delineates the circumstances in which such licensing is required, specifying that the obligation arises only for subcontracted services or where the economic operator functions as an employment agency. The legislative intent of *S.L. 452.130*, when read in conjunction with the tender

provisions, is clearly to regulate intermediaries in the employment market, rather than individuals personally performing contracted services. As this Board has observed in previous determinations, compliance obligations must be interpreted purposively, taking into account the underlying regulatory objectives rather than a literalist or over-extended application that would render the law inapplicable to its intended scope.

In light of the foregoing, it is apparent that the Respondent, by performing the services personally, does not engage in activities regulated by *S.L. 452.130*. His role does not involve the recruitment, placement, or supply of personnel to other undertakings, and thus he falls outside the ambit of an “*Employment Agency*” as understood in the legislation. The Respondent’s personal involvement in the execution of the tender was also confirmed under oath during the Appeal’s proceedings whilst no evidence to the contrary was forthcoming by the Contracting Authority and the Appellant. The Board notes that the testimony of Mr. Sandro Caruana proved to be consistent and credible throughout.

The Board finds that the tender documents did not expressly require an employment agency licence for contractors personally delivering the service, and accordingly, the Respondent satisfies the administrative and technical criteria necessary for the award. The principle of procedural fairness and sound public procurement practice mandates that tenders be evaluated in accordance with the criteria expressly set forth in the tender dossier. In this instance, there is no evidence of irregularity or bad faith on the part of the Contracting Authority. The evaluation process was conducted in accordance with the stated criteria, and the award to the Respondent represents the lowest priced compliant bid.

The objection raised by *Simply Clean Limited* is therefore unfounded both in fact and in law. While it is laudable that the Appellant has sought to ensure strict compliance with legislative norms, the Board is satisfied that the Respondent’s tender is fully compliant with the applicable legal and contractual requirements. To invalidate the award on the basis of an inapplicable statutory requirement would be contrary to established principles of public procurement jurisprudence, including the doctrines of proportionality, legal certainty, self-limitation and the proper interpretation of administrative regulations within their statutory context.

Analytical Summary

1. Scope of Employment Agency Regulations:

Article 3(6) of S.L. 452.130 regulates the activities of licensed employment agencies, primarily the supply of workers to other undertakings. The Board finds that the Respondent’s personal performance of cleaning services does not engage the functions of an employment agency. Compliance with the Act is therefore not triggered in these circumstances.

2. **Tender Compliance:**

The tender did not stipulate that every contractor must hold an employment agency licence, but rather, such a licence is only mandated in the context of subcontracting or if the tenderer operates as an employment agency. *Section 6.1.1* explicitly allows the Contractor to perform services personally. For ease of reference the Board herein quotes the tender stipulation *ad verbatim*:

Key Experts

The Service shall be delivered either by the Contractor himself or else by engaging the required personnel.

- *The Service Provider is to sign the provided attendance sheet, as proof of evidence of attendance;*
- *The Service Provider/s shall has/have the ability to communicate in Maltese and / or English;*
- *The Service Provider/s shall has/have basic training in Cleanliness and Hygiene.*

The Respondent has declared and confirmed on oath during the proceedings that he will personally deliver the services.

3. **Administrative and Technical Criteria:**

Based on the above, the Board finds that the Respondent satisfies the administrative and technical criteria as required by the tender documents. Consequently, the award to the Respondent does not contravene the express terms of the tender.

4. **Contracting Authority Conduct:**

The Board notes that the Contracting Authority evaluated the tender in good faith and followed the procedures set forth in the tender documents. No procedural irregularities affecting the award have been demonstrated.

Accordingly, the Board dismisses the objection and confirms the award of contract *NLC 02/2025* to Mr Sandro Caruana.

This decision is rendered in accordance with the principles of sound public administration, legal certainty, and the purposive interpretation of statutory obligations, consistent with the established jurisprudence of this Board.

The Board,

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

- a) Does not uphold the Appellant’s grievances and concerns and hereby dismisses the content of the Letter of Objection in its entirety;
- b) Upholds the Contracting Authority’s decision;
- c) Confirms the content of the *Letter of Rejection* of the Contracting Authority dated the 16th September, 2025 issued against the Appellant in its entirety;
- d) Confirms the content of the *Letter of Acceptance* of the Contracting Authority dated the 16th September, 2025 issued in favour of the Recommended Bidder in its entirety; and
- e) Directs that the deposit paid by the Appellant shall not be refunded.

Dr Vincent Micallef
Chairman

Mr Lawrence Ancilleri
Member

Dr Maria Cardona
Member