

**Public Contracts Review Board
Notre Dame
Ravelin Floriana
Malta**



Simply Clean Limited

vs

[i] Hal Balzan Local Council

[ii] Saviour Mifsud

REMEDIES IN ACCORDANCE WITH REGULATION 270 S.L. 601.03

BLC 04/2025 : SERVICE TENDER FOR THE COLLECTION OF BULKY REFUSE AND WEEE USING LOW EMISSION SERVICE VEHICLE FOR THE HAL BALZAN LOCAL COUNCIL

REASONED OBJECTION

Whereas, Hal Balzan Local Council issued a call for “Service Tender for the Collection of Bulky Refuse and WEEE using low emission service vehicle for the Hal Balzan Local Council”;

Whereas, Messrs. Simply Clean Limited (hereinafter “the Appellant Company” and/or “Simply Clean”) submitted its offer for the tender in question, together with other economic operators;

Whereas after evaluation, and by virtue of a letter dated 2nd December 2025, the Hal Balzan Local Council (hereinafter “HBLC” and/or “the Contracting Authority”) informed the Appellant Company that its offer was being rejected and that the tender was recommended for award to Saviour Mifsud (hereinafter “the Recommended Bidder”);

Whereas, the Appellant Company feels aggrieved by this decision and is hereby submitting the present objection in terms of Regulation 270 of S.L. 601.03, together with the relevant deposit enclosed as **DOC1**, on the following grounds:

1. First and Preliminary Greivance – Failure to Provide Requested Information

- 1.1 Reference is hereby being made to a request made to the Contracting Authority, on the 9th of December 2025. This request contained several **specific, non-confidential, material and strictly relevant** questions directly concerning the evaluation process and the Recommended Bidder’s compliance with mandatory participation requirements.
- 1.2 By means of a reply dated 10th December 2025, the Contracting Authority provided only **partial and selective information**, withholding the majority of the key questions raised. No legal basis, no justification, and no claim of confidentiality was provided to support the withholding of this information.
- 1.3 The information requested by the Appellant concerns fundamental elements of transparency, namely, the composition of the Evaluation Committee, verification of mandatory licences, reliance on subcontractors or third-party capacity, and whether the Recommended Bidder was afforded rectifications or clarifications. These matters **do not fall within the sphere of commercial confidentiality**, and in any case could be disclosed with appropriate procedural safeguards if truly sensitive.

1.4 The following information was requested:

- i. *The number of Evaluation Committee members, including the total number of evaluators appointed for this procedure.*
- ii. *The names of the evaluators forming part of the Evaluation Committee, including any changes to the Committee's composition throughout the process.*
- iii. *Clarification as to the requirement under Article 5 of the tender document relating to the possession of a Temporary Employment Agency or Employment Agency licence.*
- iv. *I kindly request confirmation:*

whether all bidders, including the recommended bidder, were compliant with this requirement; and

whether any verification or documentary checks were carried out in this regard.
- v. *Information on whether any bidder relied on the capacity of third parties or declared any form of subcontracting as part of their offer, including:*

the proportion and nature of any subcontracted services; and

whether the recommended bidder relied on subcontractors or on the capacity of third parties in order to satisfy any eligibility, technical, or professional capacity requirements.
- vi. *Specific clarification on whether there was any reliance on a Temporary Employment Agency (as required under Article 5) by the recommended bidder or any other bidder.*
- vii. *Whether the preferred bidder was given the opportunity to rectify/clarify any part of its bid.*

1.5 As a result of this non-disclosure, the Appellant has been placed in a position of **total opacity**, where it is unable to understand the basis upon which the Recommended Bidder was deemed compliant. This has forced the Appellant to file an objection **without visibility of the material facts**, thereby undermining equality of arms and the Appellant's right to an effective remedy. The Contracting Authority's failure to provide the information constitutes a **manifest breach of Article 40 of the Public Procurement Regulations**, and a serious violation of the principles of transparency, equal treatment and procedural fairness.

1.6 Reference is additionally being made to the Court of Appeal [Superior] judgment in the names of **South Lease Limited vs Central Procurement and Supplies Unit et.**, dated 22nd June 2022, wherein it was held that:

“Il-Bord irrifjuta din it-talba peress li linformazzjoni kienet, skont hu, “of a commercially sensitive nature.” Din il-Qorti ma taqbilx ma’ dan l-argument peress illi kull parti fi kwistjoni quddiem Tribunal kwazi gudizzjarju (kif inhu l-Bord in kwistjoni) ghandu dritt ghal kull informazzjoni rilevanti ghall-kaz tieghu, u l-parti l-oħra, speċjalment fejn ikun hemm dettalji teknici, trid tipprovdi dik linformazzjoni u mhux tinheba wara n-natura kummerċjali kunfidenzjali talinformazzjoni. Speċjalment f’kazijiet ta’ din ix-xorta fejn, hafna drabi, l-ghazla ddur fuq l-istruttura teknika tal-offerta, kull parti ghandha obbligu li tikxef dak kollu li hu rilevanti u relatat mal-offerta tagħha. Jekk l-informazzjoni li tkun se tinghata tkun sensitiva, il-Bord jista’ jordna li l-informazzjoni tkun accessibli biss ghalha u ghall-partijiet fil-kwistjoni, u li ma jinhargux kopji tad-dokumenti relattivi, izda jibqghu issigillati f’envelop ghall-uzu biss kif inghad. L-avversarju, pero’, ghandu dritt jitlob mill-parti l-oħra kull informazzjoni marbuta mal-kaz u rilevanti ghall-materja quddiem il-Bord”

[added emphasis]

- 1.7 In view of the foregoing, the Appellant Company is thereby requesting the Honourable Board, through an interim measure in accordance with reg. 90 (4) of S.L. 601.03 and in any case prior to the scheduled hearing, to order Contracting Authority/or whosoever, to release the information requested.
- 1.8 Given the Contracting Authority’s refusal to provide the information, the Appellant hereby reserves all rights, to the fullest extent permitted by law, to submit further or supplemental grievances, documentation, and evidence, should any additional irregularities or breaches emerge once the information is disclosed.
2. **Second Greivance – Possible Non-Compliance with Article 5 (Employment Agency Licence Requirement)**
- 2.1 The Appellant once again reiterates its complete lack of visibility on whether the Recommended Bidder or any other bidder complied with the mandatory requirement under Article 5 of the tender document relating to the possession of a Temporary Employment Agency Licence or Employment Agency Licence.
- 2.2 This requirement constitutes a **material condition of participation**, failure of which should result in automatic disqualification. However, due to the Contracting Authority’s failure to disclose even basic administrative compliance information, the Appellant remains entirely uninformed.

2.3 The Appellant stresses that the requested documentation is **not confidential**, and its withholding violates transparency, equal treatment, and the principles of the Remedies Directive.

2.4 Accordingly, the Appellant must raise this grievance **based on the very limited information**, reserving all rights should it result that the Recommended Bidder:

- did not possess the required licence;
- submitted incomplete or outdated documentation; or
- was allowed irregular rectifications or clarifications.

2.5 The Appellant therefore respectfully requests the Honourable Board to order the disclosure of:

- i. Whether all bidders submitted a valid Temporary Employment Agency Licence and/or Employment Agency Licence;
- ii. Whether such documentation was verified for completeness and validity.

2.6 Pending disclosure, the Appellant reserves all rights to expand upon this grievance.

3. Third Grievance- Potential Other Irregularities, Omissions and Inconsistencies

3.1 Given the Contracting Authority's persistent failure to disclose essential information, the Appellant cannot ascertain whether the Recommended Bidder's offer suffers from other material irregularities, omissions or inconsistencies.

3.2 Such potential irregularities may relate to administrative documentation, eligibility criteria, technical compliance, subcontracting declarations, or reliance on third-party capacity.

3.3 This grievance is therefore raised as a **protective measure**, solely due to the informational blackout imposed on the Appellant.

3.4 The Appellant expressly reserves **all rights** to supplement, amend, or expand this grievance once the requested information is released and further irregularities, if any, are identified.

4. Fourth Grievance- Appellants Bid is fully Compliant

4.1 Without prejudice to the above grievances, and firmly reserving all rights, the Appellant respectfully submits that its offer was in all respects fully compliant with

- the administrative, eligibility, technical and financial requirements of the tender document issued by the Contracting Authority.
- 4.2 The Appellant confirms that all documentation, declarations, certifications, technical specifications, and confirmations required under the tender, including all mandatory conditions, eligibility criteria, licencing requirements, and service delivery obligations were duly submitted, complete, valid, and fully aligned with the tender specifications.
- 4.3 To date, the Contracting Authority has not identified or communicated any administrative or technical non-compliance, nor has it provided any form of substantiated explanation as to why the Appellant's bid was deemed inferior to the Recommended Bidder's. This is particularly significant given the refusal or failure to provide the requested evaluation information, thereby placing the Appellant in a procedurally disadvantaged position.
- 4.4 In light of the Appellant's full compliance, the Appellant is entitled to understand how its conforming offer was assessed as unsuccessful, and whether the evaluation was carried out in accordance with the law, the tender conditions, and the principles of equal treatment and transparency.
- 4.5 The continued withholding of the evaluation details prevents the Appellant from understanding the basis upon which its compliant offer was disregarded.
- 4.6 The Appellant therefore submits this grievance on the basis that, unless proven otherwise through disclosure of the relevant documentation and evaluation records, the Appellant's offer must be deemed fully responsive and eligible for award, and that any departure from this conclusion would require clear, justified and transparent reasoning by the Contracting Authority.
- 4.7 The Appellant accordingly reserves all rights to expand upon this grievance, submit further evidence, and make additional submissions once the requested information is provided or ordered to be disclosed by this Honourable Board.

NOW THEREFORE, whilst reserving the right to put forward further submissions, the Appellant company hereby requests:

- i. Preliminary and by way of an interim decision, order the Contracting Authority to provide the information requested, and this within a reasonable timeframe, in any case before the scheduled hearing before the Board; and**
- ii. To cancel the letter of award/rejection dated 2nd December 2025 by virtue of which the offer by has been deemed as technically non-compliant; and**

- iii. To order the re-evaluation of the bids, by a newly constituted evaluation committee, which committee is to take into account the decisions and findings of this Honourable Board; and
- iv. Without prejudice to the aforesaid, in the eventuality that this Honourable Board deems it fit and opportune, to cancel this procurement procedure its entirety in accordance with Regulation 276 (h)
- v. To refund the deposit paid in its entirety; and
- vi. To do anything which is ancillary and conducive to the proper execution of this decision;

Appellant company is hereby reserving the right to present further evidence, both orally or in written, during the hearing.

Dr. Adrian Delia
Adriandelia20@gmail.com

Transaction details

Beneficiary Name & Surname / Company / Group name: PCRB
Relation: Financial Services
Reason: Other
Payment details: APPEAL FROM TENDER FOR THE COLLECTION OF BULKY REFUSE BALZAN
Currency: EUR - Euro
Beneficiary IBAN/Account: MT55MALT011000040001EURCMG5001H
Beneficiary IBAN/Account type: Valid IBAN of country - Malta
Bank name: Other bank
Bank address / Bank's BIC: Let the bank apply the beneficiary bank BIC
Beneficiary address: No
From account: 4001582822 4 (EUR)
Charges should be paid by: Shared - I pay BOV charges; PCRB pays the beneficiary bank charges
Amount: EUR 400.00
BOV to transfer the money: as soon as possible
Receiving bank to get the money as: normal priority payment
FPAD Result: The name you entered does not match our records. If you continue, the payment may be sent to the wrong person, and recovery may not be possible as it could result in fraud. This Verification of Payee check will not block the payment, but it is simply providing additional security. Please verify the payment details with the recipient before proceeding.
Saved template: no

Additional information

Credit amount: EUR 400.00
Debited amount (excluding charges): EUR 400.00
Estimated amount to be withdrawn from account: EUR 401.00
Transaction charge: EUR 1.00

Transaction result

Status: Your instructions have been processed successfully.
Transaction ID: 170672729