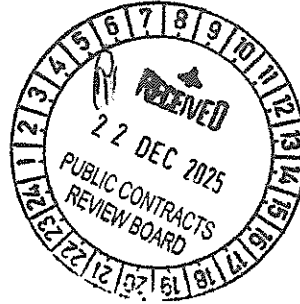


22nd December 2025

Chairman
Public Contracts Review Board
Notre Dame Ditch
Floriana, FRN 1601



Dear Sir,

Re: Service Tender for the Collection of Bulky Refuse and WEEE using Low Emission Service Vehicle for the Hal Balzan Local Council – BLC 04/2025

By means of the present we are hereby filing the 'Reasoned Letter of Reply' for and on behalf of the Hal-Balzan Local Council, as the contracting authority publishing the captioned tender (hereinafter referred to as the '**Contracting Authority**'), with reference and in response to the letter filed on the 12th December, 2025 (hereinafter referred to as the '**Objection Letter**') by Simply Clean Limited (hereinafter referred to as the '**Appellant**') in relation to the captioned tender.

The Contracting Authority informed the Appellant, by means of a letter dated 2nd December 2025, that the offer submitted by the Appellant was not accepted since the contract was awarded to the "*tenderer who submitted the cheapest priced offer, satisfying the administrative and technical criteria*".

This is evident in the letter which is being attached and marked as **Doc. A**.

By means of the Objection Letter, the Appellant contested the reason for rejection by relying on a number of grounds, which in summary are the following:

1. *Failure to provide requested information*
2. *Possible non-compliance with Article 5 (Employment Agency Licence Requirement)*
3. *Potential Other Irregularities, Omissions and Inconsistencies*
4. *Appellant's bid is fully compliant*

The Contracting Authority will humbly proceed with the following submissions as a form of reply to all grounds of objection of the Appellant's Objection Letter:

1. *First and preliminary grievance – Failure to provide Requested information*

In its first ground for appeal the Appellant submits that following the request to be provided information, only partial and selective information was provided. The Appellant submits that the information requests was not confidential and thus the Contracting Authority's failure to provide the information is in breach of article 40 of the PPR. In view of this the Appellant request this Honorable Board to order the Contracting Authority to release the requested information, including in accordance with regulation 90(4) of the PPR.

It is evident that this appeal relies exclusively on the information requested by means of an email dated 9th December, 2025 and its material objection refers to the Contracting Authority's decision not to provide the requested information. The Contracting Authority firmly maintains that it has acted in accordance with the principles of transparency, non-discrimination and procedural fairness. In fact following the request made by Dr. Adrian Delia on behalf of the Appellant on the 9th of December, 2025, the following day, on the 10th of December, 2025, the Contracting Authority replied to the requests by providing information regarding the number of Evaluation Committee members and informing the Appellant that only information related to the bid of the Appellant can be provided.

Following due consideration of the requests made, the Contracting Authority considered that the other information requested cannot be provided. From a review of the appeal filed and the email sent by Dr. Adrian Delia, it becomes evident that the Appellant does not even attempt at justifying the request for information. Thus such request for information cannot be simply made as a fishing expedition as the email and the appeal in question are portrayed. From a review of sub-regulation 40(2) it is evident that none of the information requested falls within the information which the legislation does not consider as confidential. Regulation 40 is not to be given a wide interpretation as is being implied by the Appellant but should rather be given a restrictive interpretation in order to protect the confidential information and commercially sensitive information which each bidder provides to the Evaluation Committee. In fact this article should be read in conjunction with other regulations and rules.

Reference is made to Regulation 242(2) of the PPR:

(2) On request from the candidate or tenderer concerned, the authority responsible for the tendering process shall as quickly as possible, and in any event within fifteen days from receipt of a written request, inform:

(a) any unsuccessful candidate of the reasons for the rejection of its request to participate;

(b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in regulation 53(9) and (10), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements;

(c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement;

(d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers;

(c) any unsuccessful tenderer of his right to appeal a decision taken pursuant sub-regulation (1).

From a review of this sub-regulation it becomes amply evident that none of the requests fall within the instances allowed by law to provide information. The Appellant requested very specific information regarding the technical offer of other bidders, information which is not included in this list of information to be disclosed. The legislator has on two separate occasions (Regulation 40 and Sub-Regulation 242(2)) included lists of the information which a Contracting Authority may provide and yet none of such lists include specific information related to the bid of other tenders.

Reference is made to article 14.2 of the General Rules Governing Tenders:

14.2 Information concerning checking, explanation, opinions and comparison of tenders and recommendations concerning the award of contract, may not be disclosed to tenderers or any other person not officially involved in the process unless otherwise permitted or required by law. Any attempt by a tenderer to approach any member of the Evaluation Committee, or of the Central Government Authority/Sectoral Procurement Directorate/Contracting Authority directly during the evaluation period will be considered legitimate grounds for disqualifying his tender. (emphasis added)

The Rules Governing Tenders went a step further and included a list of what **may not** be provided. It is evident that the information requested by the Appellant falls squarely within the list of information which may not be provided. This regulations allows for an exception where "*permitted or required by law*". However the Appellant fails to indicate any particular legislation which permits for the information which the Appellant is very specifically requesting to be provided.

It is in full cognisance of such rules and regulations that the Evaluation Committee acted with utmost responsibility in limiting the information which may be provided to the Appellant and acted in accordance with the law.

2. Second Grievance - Possible Non-compliance with Article 5 (Employment Agency Requirement)

As part of its second grievance, the Appellant relies on the grounds made in the first grievance and argues that the Recommended Bidder did not possess the required licence, submitted incomplete or outdated documentation or was allowed irregular rectifications or clarifications. To this end the Appellant requested the Honourable Board to order the disclosure of whether all bidders submitted a valid Temporary Employment Agency Licence and/or Employment Agency Licence and whether such documentation was verified for completeness and validity.

The Contracting Authority will not repeat the submissions made for the First Grievance which justify its decision to limit the information provided but feels compelled to point out that the information being requested by the Appellant was not even requested in the Tender Document. It is crucial to note that Article 5 of the Tender Document required:

"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...."

Thus the Tender Document did not require the bidders to provide the licence itself but rather a self-declaration that prior to contract signing they shall be in possession of such certificate. It would go against the principle of self-limitation should the Contracting Authority, or the Board, now require a document from the bidders, which was never required in the Tender Document. On this basis alone, such a request by the Appellant shall not be upheld. The evaluation committee is bound by the principle of self limitation and thus has to limit its consideration to what is requested in the tender documents and the documents submitted in line with the tender documents and from that end, the recommended bidder was fully compliant and the evaluation committee would have been in breach of the principle of self-limitation and other general principles of public procurement if it had to reject an offer for some consideration not forming part of the tender submission.

To this end reference is made to "*Leone Grech v Jobsplus, Direttur Generali tal-Kuntratti u South Lease Limited*" delivered by the Court of Appeal (66/2023/1) of 31st May 2023 – paragraph 15 states: "*F'dan il-kuntest l-appellant jagħmel asserzjoni donmatika li iżda ma hijiex korretta. Ma huwiex dejjem illi oblatur "għandu jkun fil-pussess ta' dak kollu neċessarju u mitlub fis-sejha sad-data li jagħmel l-offerta tiegħu": hennu każijiet fejn dan hu meħtieġ iżda hennu ukoll każijiet fejn ma huwiex : jiddependi mill-kondizzjoniet tas-sejha. Fi kliem ieħor, ma hijiex regola generali kif jippretendi li hi l-appellant. Il-kwistjoni hi x'kien meħtieġ filkaż partikolari tallum."* (bold & underline emphasis added). As had been outlined in the paragraphs above, at bidding stage, what was required, was a Self-Declaration.

Reference is also made to "*Cherubino Limited vs Dipartiment tal- Kuntratti et*" of 3rd October 2017 where it was stated that "*Fuq dan il-punt, din il-Qorti ttrrileva li l-kwistjoni ta' licenzji u ta' kif se jigi impurtat il-prodott offrut għewwa Malta ma hijiex materja li għandha tinteressa lill-awtorita' kontraenti jew lill-Bord. Kif jigi esegwit it-kuntratt meta jinghata mlux kwistjoni li jrid jidhol fiha l-Bord. Din il-Qorti trattat punt simili fil-każ Joe Micallef & Son Express Skip Services Ltd v. Id-Direttur tal-Anzjani u Kura fil-Komunita' u fis-sentenza tagħha*

tas-27 ta' Gunju 2014, stabbiliet dan il-principju. Gie osservat hekk fir-rigward: ".....Whether or not the bidder is at the time of tender, capable of performing as promised is irrelevant in the light of the bidder's legal obligation to do so once its bid is accepted." Mill-kumplex tas-cirkostanzi f'kaz ta' sejha li ma tinsistix mod iehor, mhux mehtieg li offerent ikun meta jitfa' l-offerta, f'pozizzjoni li jwettaq dak li l-obbliga ruhu li jwettaq, basta li dak li jkun jimpunja ruhu li jwettaq isservizz skont id-dettami tal-ligijiet urgeni tal-pajjiz."

Reference is made to Case 1891 'Pharmachemic Trading Agency Company Limited vs Central Procurement and Supplies Unit' delivered by the PCRB on 10th July, 2023 which was an appeal also based on similar grounds to the second grievance of the Appellant and which was rejected by this Honourable Board.

Thus it humbly submitted that the second grievance should be rejected in its entirety and the requests made by the Appellant as part of this grievance should be outrightly rejected.

3. Third Grievance - Potential Other irregularities, omissions and inconsistencies.

The Third Grievance is also based on the premise that certain information was not provided and is in essence a reservation, by the Appellant, to raise further grievances should it emerge that there were other irregularities, omissions and inconsistencies.

The Contracting Authority denies any "informational blackout" and asserts that the evaluation was carried out according to the law and the criteria set out in the tender document.

4. Fourth Grievance - Appellant's Bid is fully compliant

The fourth grievance is not essentially a contestation to any part of the assessment but rather an assertion that the Appellant's bid is fully compliant. The Contracting Authority

submits that as is evident, the administrative and technical compliance is not sufficient on its own. As the Appellant is fully aware, the award criteria was the price and the contract was to be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria. Thus the Appellant's submissions that the Contracting Authority has not "*provided any form of substantiated explanation as to why the Appellant's bid was deemed inferior to the Recommended Bidder's*" is striking. Comparing the financial bid of the Appellant at €74,500 to the Recommended Bidder's bid of €22,400, requires no further comments as to the Appellant's quest for a substantiated explanation as to why the tender was not awarded to the Appellant.

In view of this, the fourth grievance is to be rejected in its entirety.

On the basis of the foregoing, my client contends that the Public Contracts Review Board should find against all the appellant's demand and confirm the decision of the Contracting Authority. Whilst thanking you for your kind attention, I remain,

Yours truly,



Dr Christopher L. Vella

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Hal Balzan Local Council

Simply Clean Ltd

Tuesday 2nd December 2025

**Service Tender for the Collection of Bulky Refuse and WEEE using Low Emission
Service Vehicle for the Hal Balzan Local Council -
BLC 04/2025**

To whom it may concern,

We regret to inform you that your offer BLC 04/2025 has not been accepted by the Hal Balzan Local Council.

- i. The sole criterion for award was the price. The contract was awarded to the tenderer who submitted the cheapest priced offer, satisfying the administrative and technical criteria;
- ii. The successful bidder is Saviour Mifsud;
- iii. The price of the successful bidder is €22,400.00;
- iv. The deadline for filing a notice of objection (appeal) is ten (10) calendar days from the date of this letter;
- v. An appeal can be lodged against a deposit of €400.00.

Kind Regards

Doriette Farrugia
Executive Secretary