

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 2193 – KLMT 01/2024 – Objection – Services – Tender for Urban & non-Urban Street Sweeping Services in the Locality of Mosta in an environmentally Friendly Manner**

8<sup>th</sup> January 2026

The Board,

Having noted the letter of objection filed by Dr Jonathan acting for and on behalf of Galea Cleaning Solutions JV, (hereinafter referred to as the appellant) filed on the 17<sup>th</sup> October 2025;

Having also noted the letter of reply filed by Mr Jeremy Bartolo for and on behalf of the Mosta local Council (hereinafter referred to as the Contracting Authority) filed on the 23<sup>rd</sup> October 2025;

Having heard and evaluated the testimony of the witness Mr Jeremy Bartolo (Executive Secretary of the Mosta Local Council) as summoned by Dr Jonathan Mintoff acting for the Appellant;

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 4<sup>th</sup> December 2025 hereunder-reproduced.

### **Minutes**

#### **611 – KLMT 01-2024 – Services – Tender for Urban & Non-Urban Street Sweeping Services in the Locality of Mosta in and Environmentally Friendly Manner Vehicle**

The tender was issued on the 5<sup>th</sup> June, 2024, and the closing date was the 24<sup>th</sup> June 2024

The estimated value of the tender, excluding VAT, was 495,000 euro

On the 17<sup>th</sup> October 2025, Dr Jonathan Mint off acting for Galea Cleaning Solutions JV lodged an appeal against the decision of the Mosta Local Council to cancel tender IKOMT 01- 2024

A deposit of €2,475 was paid.

There were two bids.

On the 4<sup>th</sup> December 2025, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Mr Keith Victor Grech and Dr Ing. Damien Gatt as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant: Galea Cleaning Solution JV**

Dr Jonathan Mintoff	Legal Representative
Mr Christian Galea	Company Representative

**Contracting Authority: Mosta Local Council**

Dr Mario Mifsud	Legal Representative
Mr Joseph Gatt	Mayor and Chairperson of TEC
Mr Jeremy Bartolo	Executive Secretary
Mr Anthony Decelis	Evaluator
Mr Thomas De Martino	Evaluator
Mr Adrian Mifsud	Tender's Advisor

**Opening Statements**

Dr Vincent Micallef, Chairman of the Public Contracts Review Board (PCRB), welcomed the parties present, namely the appellant Galea Cleaning Solution JV represented by Dr Jonathan Mintoff, and the Contracting Authority, Mosta Local Council represented by Dr Mario Mifsud. He invited the parties to identify themselves and those whom they were representing during their submissions for recording purposes. The Chairman then invited Dr Jonathan Mintoff, representing the Appellant, to commence his submissions.

**Initial Submissions by Dr Mintoff**

Dr Mintoff stated that he would immediately ask for Mr Jeremy Bartolo the executive Secretary to take the stand as witness since he had few oral submissions and that he was going to rest on the merits as put forward in his written appeal.

**Witness testimony**

***Jeremy Bartolo (ID 436098 M) – Executive Secretary of the Mosta Local Council summoned by Dr Mintoff***

Dr Mintoff referring to an email which was answered by Mr Bartolo and involving the minutes of the Mosta Local Council especially about the discussing of this tender, asked whether there were any discussions between the Mosta Local Council and the Cleansing and Maintenance Division.

Mr Bartolo answered in the affirmative.

Answering questions by Dr Mintoff, Mr Bartolo confirmed that the discussions went on after the termination of his role and into the term of the present Mayor. He also explained that he became Executive Secretary the last few months i.e. in 1<sup>st</sup> August 2024.

Asked by Dr Mintoff about details of the discussions regarding the anticipated procedure of this tender, Mr Bartolo stated that there were no concrete results and these discussions reflected other discussions held all over Malta.

Dr Mintoff asked the witness if during the discussions involved prices regarding the tender.

#### **Intervention by Dr Mifsud**

At this stage Dr Mifsud objected to this line of questioning as all details regarding these questions could be found in the minutes during these discussions and insisted that everyone has the right to discuss any issues with anyone.

Dr Mifsud emphasized that questions should be made to address the issue that the Mosta Local Council cannot be involved in prices which exceed its budget. He also clarified that the mentioned meetings were also advertised even on the TV. He also asked Dr Mintoff to substantiate and clarify any other knowledge involving interested parties who might have conflicting interests.

#### **Intervention by the Chairman**

At this stage the Chairman intervened and asked both layers to keep calm and address each other with respect. He also asked Dr Mintoff to give an explanation to his line of questioning.

#### **Dr Mintoff continues with his explanation.**

Dr Mintoff insisted that he was not saying that the Local Council had acted against the law but he pointed out that according to the subsidiary Law of the Public Procurement Regulations Scheme number 1 and number 16, the Cleaning and Maintenance Department is recognized as a Contracting Authority just as much as the Mosta Local Council. Dr Mintoff explained that if there were any negotiations between the two entities so that the work involved instead by a private bidder the tender is managed by another Contracting Authority there are certain legal requirements of how and when this can be done.

Dr Mintoff continued explaining that if prices or other issues were discussed during these negotiations this means that another Contracting Authority is involved, and in such cases the law requires a threefold test which has to be followed.

Dr Mintoff explained that this is why he was asking about what type of discussions were made between the two Contracting Authorities especially if they involved services and or money, when these discussions started and if these discussions are still ongoing.

#### **Continuation of Mr Bartolo's evidence**

At this stage to the question of what type of discussions were made with the CMD Mr Bartolo answered that the discussions started by the previous Mosta Local Council and himself and the present mayor inherited a situation where the tender was already published and this involved discussions together with other Local Councils and the government relating to issues of public cleanliness. The present members of the Council attended these meetings but did not discuss the present tender as its procedures are still open.

To another question by Dr Mintoff if there were any conclusions during these negotiations Mr Bartolo answered in the negative.

To a question if there were any negotiations on prices or charges that the Mosta Local Council has to pay to the CMD for this particular service Mr Bartolo answered that he is not aware if there were any and insisted that at this stage there is nothing concrete from these discussions and these are not continuing.

To further questions Mr Bartolo stated that the tender was not issued during his tenure of office and he didn't retrieve any emails concerning the commitment form and the tender originator form.

At this stage Dr Mintoff asked on what bases the Mosta Local Council came to the conclusion that it doesn't have the finances to pay for the contract.

To this question Mr Bartolo stated that this is because the Council has a one-million-euro deficit.

At this stage Dr Mintoff declared that he has not more questions to ask.

#### **Intervention by the Chairman.**

Seeing that both parties did not need any more witness the Chairman invited Dr Mintoff to submit his final submissions.

#### **Submissions by Dr Mintoff for Galea Cleaning Solutions JV**

Dr Mintoff stated that the reason given by the Council to Galea Cleaning Solution JV was that the Council did not have the finances to pay for this contract.

Dr Mintoff continued that it resulted that the Tender's Originator Form is not found and it is a fact that in this document one can find the budget involved of the Contracting Authority and the tolerance in the eventuality that there might be a variation or amendment of the contract that is the maximum that the Council could afford as regards the financial aspect.

Dr Mintoff reiterated that the fact that the Council decided that it does not have the financial means to meet this contract creates difficulties. He continued that this argument is not valid as the document which was the bases of the publication of the tender and which establishes the financial parameters cannot be found.

Dr Mintoff continued that firstly, in his opinion the council came to a conclusion that it took the commitment to publish this tender and now it has concluded that it hasn't the financial means and secondly, he wanted to address the issue of contracts between Contracting Authorities.

Dr Mintoff stated that he amply covered the relevance of Regulation No 8 of the Public Procurement Regulations in his written appeal and insisted that as long as the Mosta Local Council is discussing the services involved in the tender, whether fully or partially with the Cleansing and Maintenance Division, this is always subject to a threefold test which will in turn justify this type of contract.

Dr Mintoff explained that the Tender Document allowed certain variations both for the offers and also for the financial aspects and this was referred to in the written appeal and besides this the tender itself states that if one has an offer higher than that of the budget this would not be excluded.

Dr Mintoff ended his submissions by stating that the cancellation of the tender is not justified and that the PCR orders the Contracting Authority to evaluate anew this tender.

At this stage the Chairman thanked Dr Mintoff and invited Dr Mifsud to make his submissions.

### **Final submissions by Dr Mifsud for the Contracting Authority**

Dr Mifsud stated that either Dr Mintoff did not see all the documents or he left out a relevant sentence in the tender which states that: “However the Contracting Authority reserves the right to accept or reject financial offers exceeding the estimated the procurement value.”

Dr Mifsud explained that there were two bidders for this tender and both exceeded the established Estimated Procurement Value by thousands of euro.

He continued that the poor financial position of the Mosta Local Council is not an invention by the previous or present Councils but a reality where the council is facing debts reaching one million euro and where even the workers involved in the Council, including the defending lawyer himself are not even being paid.

The executive secretary and the council are right when in these circumstances they decided that they would be irresponsible to accept offers which are higher than the estimated value by almost 100,000 euro and which they know they couldn’t meet the financial offer.

Dr Mifsud also explained that the criteria used by the council in such tenders was not by calculating the amount of persons involved to carry out the tender, but if there is a financial commitment the council must meet that commitment.

Dr Mifsud referred to the role of the Adjudication Board made up of members from different sectors who all understood that without finances the council would either tell the contractor to minimize his services or the council enters in a situation of default of payments with repercussions on all the council’s commitments.

### **Final Submissions by Dr Mintoff for Galea Cleaning Solutions JV**

Dr Mintoff remark that the actual difference from the Estimated Procurement Value is less than 10% and concludes his submissions.

At this stage the Chairman thanked the parties and declared the end of the sitting.

End of Minutes

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### **Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 4<sup>th</sup> December 2025.

Having noted the objection filed by Galea Cleaning Solutions JV (hereinafter referred to as the Appellant) on 17<sup>th</sup> October 2025, refers to the claims made by the same Appellant with regard to the tender of reference 611 – KLMT 01/2024 listed as case No. 2193 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Jonathan Mintoff

Appearing for the Contracting Authority: Dr Mario Mifsud

Whereby, the Appellant contends that:

a) ***First grievance – Ultra Vires Cancellation (no lawful ground)***

The Contracting Authority cancelled the tender citing lack of financial resources/bids exceeding the Estimated Procurement Value (EPV). These reasons are not among the exhaustive lawful grounds for cancellation under the PPR. Authorities must give a reasoned, lawful and contemporaneous written justification, which was not done.

b) ***Second grievance – EPV inconsistency and post-submission rule change***

Tender documents stated that the EPV was non-binding guidance, and bids above EPV were admissible at the authority's discretion. Treating EPV as a hard cap after bids were opened constitutes an unlawful post-submission change, breaching transparency and self-binding rules.

c) ***Third grievance – Proportionality and market design error***

If Statutory labour costs and fixed service requirements make bids above EPV inevitable, the fault lies in ex ante market design, not in bidders' compliance. The correct remedy would have been to revise specifications or EPV and re-tender, not to cancel compliant bids. Cancellation should be a measure of last resort.

d) ***Fourth grievance – Preventive ground of unlawful public-public arrangement***

Council minutes show that an in-house or co-operative arrangement with the Cleaning and Maintenance Division (CMD) was explored before the tender. Any Post-Cancellation shift back to CMD must strictly satisfy Regulation 7 of the Public Procurement Regulations (PPR). Any intended arrangement must satisfy the narrow and cumulative conditions set out in Regulation 8 of the PPR.

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This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on 23<sup>rd</sup> October 2025 and its verbal submission during the hearing held on 4<sup>th</sup> December 2025, in that:

After evaluation, both bids received exceeded the Estimated Procurement Value (EPV) stated in the Tender documents. The council decided that it was not in a financial position to accept either offer. All bidders were formally notified by letter dated 9 October 2025 that the offers were rejected because they exceeded the estimated value.

The Council clarifies that no new tender has been issued and no alternative offers or arrangements were considered either before or after the rejection. The Contracting Authority states that its decision was taken in strict accordance with financial parameters and public procurement regulations governing the tender.

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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.

The Board notes that the core dispute concerns whether the financial incapacity of the contracting authority, together with the level of variance between the bids received and the Estimated Procurement Value constitutes a lawful and proportionate ground for the cancellation of the tender. The Board further notes that the Appellant's three grievances are intrinsically linked to this central issue and shall therefore be considered collectively.

### **On cancellation based on financial incapacity and bids exceeding the Estimated Procurement Value**

The Board recalls that, under Maltese public procurement law and settled PCRB jurisprudence, cancellation of a tender constitutes an exceptional measure and must be:

- Objectively justified,
- Proportionate, and
- Based on genuine and demonstrable reasons existing at the time of the decision.

The Board notes that the Contracting Authority's justification for cancellation is two-fold, being:

- That the Council is burdened with debts amounting to Approximately EUR 1million
- That the bids received exceeded the EPV by hundreds of thousands of euro, which, in light of the Council's financial situation, was considered excessive

The Board observes at the outset that financial difficulties which existed, or ought to have been known, prior to issuing the tender cannot be invoked retrospectively to justify cancellation. A contracting authority may not invite economic operators to incur costs of tender participation and then withdraw **solely** [*Board emphasis*] quoting financial difficulties.

Accordingly, while financial difficulties are in principle a legitimate concern, they cannot be relied upon in an abstract or ex-post manner where the contracting authority itself initiated the procedure and invited the market to bid. To do so undermine the principle of fair treatment towards the bidders who competed in the bid.

Furthermore, during the hearing, it transpired that the Tender Originator Form (TOF) and the Commitment Form could not be traced. These forms constitute internal administrative and financial control instruments, intended to ensure that a contracting authority:

- Properly plans the procurement;
- Identifies the estimated procurement value;
- Secures prior budgetary clearance; and
- Complies with public finance governance rules.

The Board reiterates its constant jurisprudence that internal preparatory irregularities, even where established, do not automatically render a published tender procedure unlawful vis-à-vis third-party economic operators, unless such irregularities:

- Materially affect the tender conditions, or
- Distort competition, or
- Breach the principles of transparency, equal treatment or proportionality.

The absence or non-retrievability of a TOF or Commitment Form does not, in itself, invalidate a tender procedure already published and competed for, particularly where:

- The tender documents clearly stated the Estimated Procurement Value;
- The rules of participation were known ex ante;
- Bidders submitted compliant offers in reliance on the published documentation.

To hold otherwise would, in the Board's view, create a legally unsustainable precedent, whereby contracting authorities could retrospectively invalidate procurement procedures by invoking their own internal administrative failures, thereby undermining legal certainty and the legitimate expectations of bidders.

Finally, following careful consideration of the documentation and submissions the Board notes that the variance between the Estimated Procurement Value (EPV) and the Appellant's financial offer amounted to approximately 183% or EUR347,129.20 over EPV.

The Boards recalls that it is not within its remit to establish financial thresholds above which offers will not be considered. This prerogative lies with the Contracting Authority and must be exercised before the issuance of a tender. The Board consistently held that the EPV does not constitute a binding price ceiling **unless the tender documents expressly and unequivocally so provide**. Section 1 – Instructions to Tenderers, article 1.3 clearly and unequivocally states that:

*“The purpose of this value shall be the guidance of prospective bidders when submitting their offer and is not to be considered as a binding capping price”.*

This, however, does not imply that bidders may submit offers without limit and in turn oblige the Contracting Authority to enter into a contract which it demonstrably lacks the financial capacity to honour, as this would expose both parties to foreseeable default and disrupt public service continuity.

The Board therefore considers the reasons advanced by the Contracting Authority, being financial distress and the level of variance, cannot be assessed in isolation. They must be evaluated together, particularly since the Contracting Authority could not have known the market response at the time the Tender was issued.

It follows, the decisive question is whether, in the circumstances of this appeal, the decision to cancel the tender was proportionate. The Board finds that a margin of approximately 183%, cannot be characterised as normal, modest and foreseeable. When this factor is assessed in conjunction with the Council's significant indebtedness, the board concludes that the decision to cancel the tender was objectively justified and proportionate.

### **On alleged unlawful public-public arrangement**

The Appellant further alleged that Council minutes' show that an in-house or co-operative arrangement with the Cleaning and Maintenance Division (CMD) was explored before the tender. It maintains that any Post-Cancellation shift back to CMD must strictly satisfy the "Three-way test" as set out in the Public Procurement Regulations.

During his testimony, Mr Jeremy Bartolo, Executive Secretary of the Mosta Local Council, explained that these discussions arose from a general invitation issued by Central Government to various local councils to explore opportunities relating to public cleanliness. He confirmed that the Council did not commit to any arrangement, did not discuss the subject tender, and no conclusions were reached.

The Board notes that no evidence was produced establishing the existence of any public-public cooperation agreement or unlawful arrangement with CMD. In absence of substantiation, the Board find no basis to uphold this grievance and will not consider it further.

### **The Board,**

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

- a) To reject the appeal submitted by the Appellant, Galea Cleaning Solution JV;
- b) To uphold the decision of the Contracting Authority to cancel KLMT 01/2024 - Services - Tender for Urban & non-Urban Street Sweeping Services in the Locality of Mosta in an environmentally Friendly Manner; and
- c) To order that the deposit paid by the Appellant shall not be reimbursed.

**Mr Vince Micallef**  
Chairman

**Mr Lawrence Ancilleri**  
Member

**Mr Keith Victor Grech**  
Member