

PUBLIC CONTRACTS REVIEW BOARD

Case 2217 – Objection 602 – SGLC/T/01/2025 – Service Tender for the Collection of Bulky Refuse and WEEE using Low Emission Vehicle for San Gwann Local Council

04th March 2026

The Board,

Having noted the *Letter of Objection* filed by Dr Jonathan Mintoff acting for and on behalf of **Galea Cleaning Solutions JV** (hereinafter referred to as “*the Appellant*”) filed on the 29th September, 2025;

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

Having heard and evaluated the testimony of the witness Dr Matthew Paris (Evaluation Committee Member) as duly summoned by Dr Jonathan Mintoff on behalf of the appellant company;

Having heard and evaluated the testimony of the witness Ms Karin Cremona (Transport Malta representative) as duly summoned by Dr Jonathan Mintoff on behalf of the appellant company;

Having heard and evaluated the testimony of the witness Ms Pauline Camilleri (ERA Representative) as duly summoned by Dr Jonathan Mintoff on behalf of the appellant company;

Having heard and evaluated the testimony of the witness Mr Melchior Dimech (Appellant Company Representative) as duly summoned by Dr Zackariah Esmail on behalf of the contracting authority;

Having noted and evaluated the minutes of the Board sitting of the 19th February, 2026, hereunder-reproduced.

Minutes

Case 2217

Obj 602 – SGLC/T/01/2025 – Service Tender for the Collection of Bulky Refuse and WEEE using Low Emission Service Vehicle for the San Gwann Local Council

The tender was issued on the 20th May 2025, and the closing date was the 24th June 2025

The estimated value of the tender (excluding VAT) was 71,000.00 Euro

On the 29th September 2025 Dr Jonathan Mintoff on behalf of Saviour Galea, Joseph Galea and Christian Galea in their own name and for and on behalf of: - Cleaning Solutions JV lodged an appeal against the San Gwann Local Council in accordance with Regulation 270 et seq, of the Public Procurement Regulations.

On the 19th February 2026 the Public Contracts Review Board (PCRB) composed of Dr Vincent Farrugia, Dr. Ing Damien Gatt and convened a Public hearing to consider the appeal.

A deposit of 515.00 euro was paid

There were 3 bids

The attendance for the public hearing was as follows:

Appellant: Galea Cleaning Solution JV

Dr Jonathan Mintoff	Legal Representative	Online
Mr Saviour Galea	Company Representative	Online
Mr Christ Galea	Company Representative	Online

Contracting Authority San Gwann Local Council

Dr Zack Esmail	Legal representative
Ms Gaynor Bajada	Secretary
Mr Chris Falzon	Chairperson
Dr Mathew Paris	Evaluator

Preferred Bidder: Simply Clean

Mr Melchior Dimech	Company Representative
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Witnesses – Requested by Appellant

Ms Pauline Camilleri

ERA Representative

Ms Karin Cremona

Transport Malta Representative

Opening Statements

Dr Vincent Farrugia, Chairman of the PUBLIC Contracts Review Board, welcomed all the parties and invited Dr Jonathan Mintoff the representative of the appellants to start with the initial submissions.

Initial submissions by Dr Jonathan Mintoff (for the Appellants)

Dr Mintoff referred to a formal request filed by the appellant on the 20th November 2025 and stated that he does not know whether the PCRB had made any decisions about it. He stated that this involved the decision made by this board regarding the disclosure for information.

Intervention by the Chairman.

The Chairman stated that there was no decision but the Board is giving the opportunity to address this issue.

Intervention by Dr Esmail

Dr Esmail asked the Board to indicated which request was this.

Intervention by Dr Mintoff

Dr Mintoff referred to the email of the 20th November 2026 where this was also copied to Dr Esmail. Dr Mintoff also offered to send Dr Esmail a copy at that instant.

Intervention by the Chairman

The Chairman stated that the Board has a copy and asked a member of the staff to present it.

Initial statements by Dr Mintoff

Dr Mintoff explained that the Contracting authority exposed the evaluation clarifications between itself and the bidders and that the appellants' objection focuses mainly about one particular clarification where documentation was demanded about a particular vehicle. Dr Mintoff insisted that according to the appellant the information given was merely recording that this was compliant but how it became compliant the appellant is not privy to that information. He continued that the bidder is a company and registered with ERA but during this tender this company did not have a refuse collection vehicle that the tender requires which means that if there is a vehicle this does not belong to the bidder. The appellant wants to the relationship between the bidder and the owner of this vehicle to be investigated since this information is not at our disposal.

Intervention by the Chairman

The Chairman invited Dr Zack Esmail to present his submissions.

Dr Esmail agreed that since the Board had asked for the release of this information, this had to be divulged during this hearing by the evaluation committee whose members are present.

Intervention by the Chairman

The Chairman stated this information could be elicited during this hearing from the evaluation committee.

Intervention by Dr Mintoff

Dr Mintoff declared that any member of the evaluation could take the stand as a witness to answer to his questions.

Intervention by the Chairman

The Chairman invited Dr Mathew Pulis (ID No 605281) to take the stand.

Dr Mintoff referred to a clarification asked by the Contracting Authority to Simply Clean regarding a particular vehicle where the tenderer bears ID no 228406 and asked what was submitted by the preferred bidder regarding this vehicle, its registration number and who was the owner of this vehicle.

Dr Paris answered that during the evaluation the adjudicating committee realized that there was a mismatch between the name of the bidder and the log book provided. Dr Paris continued that the AC asked for a clarification and the answer from the company was a letter of undertaking stating that both the bidder who is and the operator of the vehicle is Melchior Dimech and that the vehicle in each case was at the disposal during the duration of the contract. The actual owner of the vehicle is "Some Day Yachting Limited." Dr Paris stated that the EC was satisfied with this answer

To a question by Dr Mintoff whether the specifications i.e. any payments; the relationship between the owner Joe Dimech and the bidder; what type of undertaking to be provided from the mentioned company which is not the actual bidder; are to be found in the mentioned letter of undertaking, Dr Paris explained that this letter was signed by the Director of the Company who is Melchior Dimech which states that he is putting the vehicle at the disposal of the recommended bidder but there are no references to payments, relationship or other matters.

To another question by Dr Mintoff, Dr Paris answered that the EC did not ask whether the type of undertaking involved compensation or any other considerations.

At this stage Dr Mintoff referred to the logbook of the vehicle specifically to section D 3 and its reference to what type of vehicle is provided and asked Dr Paris to read out the letters in caps. To this Dr Paris read out ELF Drop-side.

To a question by Dr Mintoff as to whether there were any indications regarding that this is a curtain-sided vehicle Dr Paris asked Dr Mintoff to indicate where this could be found.

Dr Mintoff referred to the log book of his client which was provided in his offer and asked the Chairman for permission to show that the number of the vehicle of the appellant is BDB526.

Intervention of Chairman

Permission granted

Dr Mintoff continues with the cross examination.

At this stage Dr Mintoff invited Dr Paris to compare his client's log book with that of the preferred bidder

Dr Paris stated that part of the submissions of the preferred bidder's offer had 5 different logbooks of 5 different vehicles and he suggested to go through the five of them and explained that some referred to Some Day Yachting Limited and some referred to Dimbros Limited.

Dr Paris continued that the letter of undertaking covers both entities and both form part of the same bid.

Intervention of the Chairman:

The Chairman wanted a confirmation that as regards both societies mentioned the UBO is the same person.

Dr Paris answered in the affirmative.

Dr Mintoff continues with the cross examination

Dr Mintoff demanded to go through all the vehicles, their number plates, owner and if there are any references to curtain-sided vehicles on Section D 3

Dr Paris explained:

1st Vehicle: Reg. No DCT959 - Some Day Yachting Limited – in Section D 3 it is ELF Drop-side

2nd Vehicle; Reg. No JCO497 - Some Day Yachting Limited – in Section D 3 it is ELF Drop-side

3rd Vehicle Reg. No ECF 441 - Dimbros Ltd - in Section D 3 it is ELP Truck

4th Vehicle Reg. No IBZ 496 - Dimbros Ltd - in section D 3 it is ELF Truck

5th Vehicle Reg. No CEC 287 - Dimbros Ltd - in Section D 3 it is Dyna Truck with Tail lift

Intervention by Dr Mintoff:

At this stage when Dr Mintoff invited Dr Paris to compare this to the log book of the appellant found in Section D 3. Dr Paris read out that the number of the vehicle in question is BDB 526, the owner is Saviour Galea and its description is Forward Curtain Sided.

Dr Mintoff invited Dr Pulis to show how the preferred bidder showed that he was compliant to one of the requirements of the tender which was that these had to be Curtain-Sided, from the log book, from Dr Paris' testimony since prima facie the details of the preferred bidder do not show prima facie that these are curtain-sided.

Dr Paris stated that together with the documentations in question the preferred bidder included documentation in the form of photos which the AC accepted as valid requirements.

Dr Mintoff then asked if there was an engineer's certificate confirming that these were in compliant with those accepted by Transport Malta.

Dr Mintoff changed this question after an objection by Dr Esmail who declared that this was a direct question.

Dr Mintoff asked how was compliancy affirmed by the AC besides the photos.

To the corrected question Dr Paris answered that the AC followed the tender document, familiarize itself with the requirements and decided that the documents presented including the logbooks and the photos which were mandatory requirements were compliant to the technical specifications.

Dr Mintoff then referred to the ERA licenses the number plates and in whose name these are authorized. He also asked if these referred to the same owner who is indicated in the log book or third persons.

Dr Paris stated that he had in his presence the documentation about the vehicles' certifications by ERA like the CEC 479 and the CEC 287 etc. and offered to examine them together.

Dr Mintoff insisted that he was specifically asking if these certifications where issued to the same individual.

Dr Paris confirmed that these were all issued under the name of Melchior Dimech.

To another question by Dr Mintoff whether the EC made other clarifications to establish any links or considerations in the letter of underrating between these two companies, Dr Paris stated that the EC cannot make another clarification on the same clarification as this is prohibited by the Standard Operating Procedures. Dr Paris concluded that the letter of undertaking satisfied the requisites and did not feel the necessity of asking other ulterior questions.

End of Dr Mintoff's questions to Dr Paris

At this stage Dr Mintoff asked a representative of Transport Malta to take the stand

The Chairman called Ms Karin Cremona ID 494879 M to take the stand.

Answering to a question by Dr Mintoff, Ms Cremona stated that she was given a list of 5 vehicles by the Board and listed them:

- ECF 441- Izuzu ELF Truck registered on Dimbros Ltd and the contact person of this company is Josephine Dimech ID No 379262M
- Vehicle CEC 287 – Toyota Dayna Truck with tail lift and registered on Dimbros Ltd and the contact person is Josephine Dimech ID No 379262M
- IBZ 496 – Isuzu Elf Truck registered on Dimbros Ltd contact person Josephine Dimech ID No 379262M
- JCO 479 Izuzu ELF Drop-side, registered on Some Day Yachting Ltd, contact person Melchiore Dimech. ID No 119582M

- DCT 959 – Izuzu Elf Drop-side registered on Some Day Yachting Ltd contact person Melchior Dimech ID No 119582M

Dr Mintoff asked Ms Cremona a set of question to which she answered that:

- There is no vehicle from these 5 mentioned that is registered as a curtain sided vehicle
- There is a procedure that once there is a modification to a vehicle the owner has to see that this modification is reflected in the log book
- This is done through an application
- If the owner does not go to report to the authority to show this modification and to ask for the logbook to be arranged the authority would not know.
- There is a specific application to be filled by the owner together with an engineer's report to describe the conversion to be made and that everything is in order; that the vehicle is safe together with a discrepancy form. After the vehicle will be inspected by the Authority's technical unit to certify its road worthiness and a new log book with the conversion is issued.

At this stage Dr Mintoff declared that he had no more questions to make to Ms Cremona

Intervention by the Chairman

At this stage the Chairman asked Ms Cremona which from the mentioned vehicles are not curtain sided and how are the vehicles qualified.

Ms Cremona stated that this is found in Section D 3 of the Log book and stated that as an example vehicle ECF 441 qualifies as a truck and not a curtain sided vehicle like the of Coca Cola being rather big having a curtain which moves on hooks A truck or box truck is enclosed and has a tail lift. She continued by explaining the various vehicles mentioned:

- ECF 411 is a truck
- CEC 287 is a Dayna truck with tail lift which moves up and down to allow goods to be put inside.
- IBZ 496 is a truck
- JCO is a drop side and has a box with its sides able to drop sideways.
- DCT 959 is a drop side.

At this stage the Chairman asked Ms Cremona for more details in order to be able to distinguish between drop sided vehicles as opposed to curtain sided ones,

Ms Cremona presented a set of photos to be able to meet this demand.

She indicated the following:

- A Box truck
- A truck without a box but having sides which can open but also without a lid
- A curtain sided one
- One with tail lift but without a lid i.e. an open box
- One with drop side which could be a truck with its sides fixed or it could be a truck with drop side like in the case of the Toyota Hilux.

At this point Dr Mintoff asked whether those with the sides closed of sides which can drop sideways like those shown in the photos are higher than the cabin.

To this question Ms Cremona stated that she was not that technical to give an opinion.

Dr Mintoff responded that all those in the photos have boxes without a cover while the curtain sided have a roof and curtains.

Ms Cremona agreed to this.

At this point the Chairman requested the following verbal to be minuted.

“Karin Cremona who is a Transport Malta Representative has presented a set of four (4) documents marked as KC1, KC1, KC3, and KC4 respectively.”

Ms Cremona ended her testimony but was asked to wait outside the Aula for future questions by Dr Esmail

At this stage Dr Mintoff requested that a representative of ERA to take the stand and the Chairman called Ms Pauline Camilleri ID No 21785M to take the stand.

The Chairman invited Dr Mintoff to proceed with his questions.

Dr Mintoff asked Ms Camilleri to confirm if one has to submit an application for an authorization from ERA regarding the vehicles' classes.

Ms Camilleri confirmed.

Dr Mintoff asked if the Authority needs an application if there are any changes in the log book with the newly adjourned logbook in cases for example like change in ownership or otherwise.

Ms Camilleri answered that yes if there is a change of ownership.

Dr Mintoff asked about if there are other changes.

Ms Camilleri answered that the authority is interested that the vehicle is in the name of the owner and that he had submitted the application. The authorization is for the vehicle and not the owner.

Dr Mintoff asked if the type of refuse is effected in the eventuality of a change in the structure of the vehicle.

To a question by Dr Mintoff Ms Camilleri answered that a change in the structure of a vehicle effects the type of refuse and this depends also on the type of class of the vehicle.

To another question Ms Camilleri that the owner has to inform the authority with the changes, by applying again and submit the certifications especially for certain classes.

Dr Mintoff asked Ms Camilleri whether she has the numbers of the logbooks in question about which she has to testify.

Ms Camilleri answered that she only has the name of the company involved which is Simply Clean.

To another question by Dr Mintoff Ms Camilleri explained that the licenses are about the vehicles' number plates and that the authority cannot say if a company has 6 or 10 vehicles in its name because the owner applies for the vehicles.

She continued that if a vehicle is registered in a logbook in the name of a company and the name of the company is mentioned in the application this would be on the Authority's register.

She explained however that if all the vehicles are in the name of an owner and the owner has applied but did not mention the company, the authority recognizes the owner himself and the number plate of the vehicle.

To another question Ms Camilleri stated that nobody mentioned the company Simply Clean and it is not in our registers.

At this stage Dr Mintoff declared that he has no further questions to ask.

The Chairman invited Ms Cremona to take the stand again.

Dr Esmail referred the number of photos that she had presented to the Board and particularly to vehicle JCO 479 of the recommended bidder and asked Ms Cremona if she would say what type of Vehicle it is.

Ms Cremona stated that it is a truck which seems to have a tail lift and its box is closed.

At this stage Dr Esmail stated that there is another photo which shows the truck from the side.

Dr Mintoff asked the Chairman to declare which if the photos showed number plates or identifications and which photos and which vehicles since he was on-line and couldn't follow the proceedings.

Intervention by the Chairman

The Chairman explained that Dr Esmail was showing the photos so that Ms Cremona could describe what the truck is and invited Dr Mintoff to ask the necessary questions during the cross examination.

Ms Cremona stated that the photos in front of her shows Vehicle JC) 479 from behind with a tail lift which drops down since it has pistons at the back. She continued that a closed box could also be seen.

Ms Cremona continued that there is another photo of the said vehicle showing the front and also a closed box.

Ms Cremona referred to another photo of a vehicle whose number plate cannot be seen but seems to be a truck with a closed box covered with some kind of clothing or plastic. She continued that there is on its side a side door which drops since she could see its hinges.

Dr Esmail asked Ms Cremona if from her knowledge and the photo of the vehicle presented she could say that the vehicle in question could be curtain sided and tail sided at the same time.

Ms Cremona answered that she was not a technical person but from what she can see that it has a tail lift but it is not a curtain sided and all that she could see is that it has a box but she couldn't ascertain if there is a curtain which slides.

Intervention by the Chairman

The Chairman intervened and stated that he could discern clothing.

At this remark Ms Cremona said that she agreed but couldn't say if it slides.

Cross examination by Dr Mintoff

Dr Mintoff asked Ms Cremona why she was doubtful if it was curtain sided or not and; what makes a vehicle curtain sided and what are the elements which makes a curtain sided vehicle.

Ms Cremona stated that such a vehicle has a curtain which slides both ways.

Dr Mintoff then asked Ms Cremona if she could identify a curtain sided vehicle from the photos which were shown to her.

Ms Cremona answered that she could not see the hooks on which a curtain slides so she could not tell.

At this stage Dr Mintoff ended his cross examination and the Chairman asked Ms Cremona to leave.

Intervention by Dr Esmail

Dr Esmail called Melchior Dimech (ID 119582M) the recommended bidder to take the witness stand.

Dr Esmail showed the photo of vehicle JCO 479 to Mr Dimech and asked him how this vehicle satisfies the requirements of the tender.

Mr Dimech answered that if one sees vehicle ICO 479 from the sides the number plates are not shown because in the tender one of the requirements of ERA it states front, sides and back, so one cannot see the number plate if the photo has to show the sides.

Intervention by the chairman

The chairman asked Mr Dimech to confirm under oath that the track in question is ICO 479

Mr Dimech confirmed and continued that if seen from behind the curtains have hooks and the side curtains instead of moving sideways they move up and down.

At this stage Dr Esmail concluded his examination.

The Chairman invited Dr Mintoff to start his cross examination

Dr Mintoff started by asking what is Mr Dimech's profession

Mr Dimech answered that he is an entrepreneur involved in business.

Dr Mintoff asked if Mr Dimech is an engineer or a technical person who certifies these vehicles.

Mr Dimech stated in the negative.

Dr Mintoff asked if Mr Dimech had issued any certificates regarding curtain sided vehicles.

Mr Dimech reiterated that he did not have to do this as when the vehicles were bought and when they were registered the vehicles had the same structure that they have today as there were never any changes to the van, the box the curtains present nor even in the engine.

At this stage Dr Mintoff ended his cross examination

The Chairman declared the examinations and cross examination as closed and invited the participants to begin their final submissions. He invited Dr Mintoff to start his submission.

Final submission of Dr Mintoff

Dr Mintoff started by referring to court cases namely:

Sultech & Co vs Tal-Qala Local Council Gozo et, No. 210/2024/1 decided on the 16th July 2024 and the decision of this Board as composed today which confirmed the same principle and which it decided on the 20th June 2025 Case No 212

The decision of the first Boar which was composed with different members, had decided that the Board should not decide on such issues an undertaking between an owner of a vehicle and a preferred bidder. Dr Mintoff continued that in that case even the contracting authority did not get involved in this issue while the Court of Appeal decided that this was a necessity, hence a letter of undertaking is mandatory.

Dr Mintoff reiterated that Dr Paris was correct in stating that the EC couldn't ask for another clarification, but since the whole information was not there, that letter of undertaking alone was not sufficient. In fact, this Board as constituted, in its second decision confirmed what the court had decided meaning that there this issue should be examined.

Dr Mintoff than addressed the issue of the vehicle.

He referred to the 3rd paragraph on page 15 of the Tender Document which specifically says that the vehicle must be a curtain sided one. He continued that according to the Transport Malta representative and even that of Dr Paris, the appellant has a clear logbook and his vehicle is a curtain sided one,

Dr Mintoff continued that even so, the preferred bidder does not have in his various logbooks and which were presented in Section D3 of the Tender Document a clear commitment that the vehicle is curtain sided.

This has also been supported by the same Transport Malta representative during this sitting that the vehicle in question is not a curtain sided vehicle; an authority which regulates the vehicles how they operate how they have to operate in our streets.

Dr Mintoff continued that if a modification was made, the Transport Authority is not in the know and in the case a possible modification whether after or before the vehicle was imported this is a non-issue as the certificated document recognized by the state is already stating that this vehicle is not a curtain sided vehicle.

Dr Mintoff stated that the if the contracting Authority accepts that after seeing these photos the vehicle qualifies, which according to him this is not the case, this too is not sufficient because the Transport authority declares that modifications require a certificate by an engineer to confirm that the vehicle conforms to law.

Dr Mintoff insisted that this goes hand in hand with the sentence of the appeal that he referred to before and he continued that if one consults the tender governing rules, a specific clause states that one has to conform to laws when submitting his offer.

He continued that since there was doubt, the photos themselves are not sufficient because the logbook is not reflecting that which the case may be. This raises a problem and following the court's decision the Contracting Authority cannot accept what was given to her.

Dr Mintoff insisted that the tender requirements were clear especially those regarding what type of vehicle was needed in the technical offer. He explained that the part that he quoted from parts of the terms of reference found in note 3 specifically Page 15 4.2.4, which debar any use of clarifications, shows the shortcomings of the Contracting Authority which had to disregard the offer from the beginning as soon as it was submitted.

At this stage Dr Mintoff quoted the ERA representative who as witness said that if there are changes in the logbook this is something different as different types of vehicles carry different types of waste. He continued that if the logbook is not reflecting the truth the problem remains the same and this shortcoming must be exposed to the authority, something that is not attributed to Simply Clean.

Dr Mintoff insisted that the Contracting Authority should not persist to accept an offer which is full of shortcomings and which have been exposed and also subject to the court of appeal's decisions as not being conforming to law. Dr Mintoff ended his submission by describing shortcomings which involved how a modification of a vehicle is made, a logbook which must reflect the truth apart from the procedure of note 3 which states that a clarification cannot be made and with the fact that pots alone shows primei face that the preferred bidder was not compliant.

End of Dr Mintoff' final submission.

At this stage the Chairman as the minor staff to present the technical offer form and invited Dr Esmail to submit his final submissions.

Final Submission by Dr Esmail.

Dr Esmail referred to regulation 235 of 601.03 and read out from part 235 (1) entitled – "Reliance on the capacities of other entities"

“Where an economic operator wants to rely on the capacities of other entities, it shall prove to the Contracting Authority that it will have at its disposal the resource necessary, for example by producing a commitment by those entities to that effect.”

Dr Esmail stated that the hearing started this objection saying that Simply Clean did not have the requirements and did not have the vehicles in its name to this tender. It was also established that there was a reliance on others in this case Some Day Yachting and also Dimbros Ltd and there was a letter of reliance which was actually established with certainty that this was making all vehicles available to Simply Clean and to the satisfaction of Regulation 235,

Dr Esmail contended that putting aside the reference made by Dr Mintoff aside regulation 235 actually states that one must have this reliance in this case the vehicles. In fact, Dr Esmail continued that the letter of undertaking establishes that actually one certainly has at your disposal the necessary resources, in this case the vehicles. This mean Dr Esmail continued that the letter of undertaking satisfies regulation 235 as already confirmed by Dr Paris.

Dr Esmail then addressed the issue of the vehicles and whether they are curtain sided or not. In fact, he reiterated that the contracting authority established with certainty that the vehicles are compliant were compliant and are still compliant.

Dr Esmail continued that when the representatives of Transport Malta and ERA were asked about the fact that there was no mention of curtain sided vehicles on the log book and when asked if it is the same vehicle having a tail lift the witness stated that she was not a technical person. This means that nobody confirmed that this vehicle was not compliant and furthermore Mr Dimech who is the owner under oath confirmed that that this was the vehicle with curtain sided features.

Dr Esmail then referred to page 15 clause 4.2.4 of the tender document regarding Vehicle Type and GPP which read:” The contractor shall at all times during the operation of the contract make use of those vehicles approved by the Local Council as mentioned.... etc.

Dr Esmail reiterated that once a bidder signs the contract he is no longer an economic operator but a contractor and as such has to honour all requirements to which he has signed. The EC abided by the parameters of the tender document and once the bidder has the contract he has to verify and confirm that he has the necessary vehicles. At this stage Dr Esmail referred to a Court of appeal sentence Joe Micallef and Sons Express Skip Services Ltd Vs The Director of Old Age and Community Care delivered on 24/06/2014.

Dr Esmail stated that the Contracting Authority acted according to the parameters of the tender regulation and when there is a contractor who has a contract he has to confirm the vehicles at his disposal.

Dr Esmail quoted from the sentence “Anything which has not been requested by the tender document ab initio, cannot be requested by the evaluation committee at the evaluation stage. Additionally, the evaluation committee should not investigate whether a bidder will comply with the terms of his own bid. 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.

Dr Esmail also referred to Case decided on 25th January 2007 Double N Earthmovers Ltd Vs Earthmovers (City) and according to this sentence the evaluation committee does have the duty to verify if the contractor has the necessary requirements since he is not yet the contractor. This means that according to clause 4.2.4 of page 15 that during the time before being given a contract and the EC feels that the bid was compliant it is the contractor to stick to what he is offering.

Dr Esmail concluded that from Mr Dimech's statement under oath it has been verified that the vehicle in question is curtain sided, and the contracting authority representatives verified that due to the fact that there were doubts if the same vehicle and the same photo did not have a number plate Mr Dimech's declaration under oath verified that that the same vehicle is also confirmed that it is curtain sided and therefor *compliant* and that the Contracting Authority was correct to recommend Simply Clean for the tender.

End of Dr Esmail final submission

Last intervention of Dr Mintoff

Dr Mintoff asked for permission to include other court sentences namely:

Two Cases of the Court of Appeal

One decided on 9th March 2020 and the other 1st December 2020 both with the same name:

Sultech & Co Vs Gozo Ministry that goes against of the names Micallef that Dr Esmail quoted. And apart from this Dr Mintoff made a reference for a preliminary reference given by the European Court of Justice case C131/16 especially paragraph 31 of the said preliminary reference.

The Chairman thanks those present and declared the hearing as closed.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 19th February, 2026.

Having noted the objection filed by Dr Jonathan Mintoff (hereinafter referred to as "*the Appellant*") on the 29th of September, 2025, refers to the claims made by the same Appellant with regard to the tender of

reference – SPD5/2025/023 – *Supplies Tender for a Digital Cytology Platform with Additional Energy-Efficient Equipment – Lot 1* listed as case No. 2217 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Jonathan Mintoff

Appearing for the Contracting Authority: Dr Zackariah Esmail

Whereby, the Appellant contends that:

Facts of the Case:

- The Contracting Authority for the above-captioned procurement is the San Gwann Local Council (CA") (email: sangwann.lc@gov.mt).
- The procurement concerns a service tender for the collection of bulky refuse and WEEE using a low-emission service vehicle, as described in the tender dossier ("Tender").
- The stated Criteria for Award (para. 6.1) was price (i.e. the bidder submitting the cheapest priced offer satisfying the administrative and technical criteria).
- The closing date for the submission of offers was 24/06/2025 at 11:00.
- The Objector submitted its offer within the period for submissions.
- The Objector's offer is the cheapest offer that satisfies the award criteria.
- The ePPS reference is SGLC/T/01/2025; the Objector's submission bears Tender ID 228564.
- On 19 September 2025 the CA notified the recommended award in favour of Simply Clean Ltd (the "Preferred Bidder") (copy attached and marked Doc. "A").
- The Tender's technical specifications require, inter alia:
 - use of a curtain-sided service vehicle meeting the stipulated low-emission standard;
 - proof that proposed waste-carrying vehicles are authorised/registered with the Environment and Resources Authority ("ERA") for the relevant waste classes and that such vehicles carry valid ERA registration tags; and
 - where vehicles are not owned by the tenderer, evidence of title to use and regulatory authorisations covering the tenderer's proposed operations.
- The Objector has reviewed publicly available ERA records (ERA Valid Waste Carriers List, latest version as at 22/09/2025) and notes that Simply Clean Ltd does not appear listed as a valid waste carrier, nor are vehicles traceable to the Preferred Bidder on that list.
- From the award documentation and publicly available information, the relationship between the vehicle owner and the Preferred Bidder is unclear, and vehicle compliance with tender requirements is not established.

- The CA nevertheless recommended award to the Preferred Bidder. The Objector received the notification and files this objection within the statutory standstill period
- By means of an email sent on 26 September 2025 to the CA, the Objector requested further information in accordance with Regulation 40 PPR (copy attached and marked Doc. "B"),
- The Appellant feels aggrieved by the decision and files this objection within the established time-frame together with the required deposit of five hundred and fifteen euro. A copy of the payment confirmation is being attached.

OBJECTION

The Objector submits that the above-captioned call for tenders was not evaluated according to law and that the evaluation breached principles of natural justice.

The tender dossier clearly stated the award criterion noted above; however, the Contracting Authority and/or Evaluation Committee awarded the tender to a bidder whose bid was not administratively, technically, and financially compliant.

In view of the above, the following grievances are raised:

1. Preliminary Grievance - Limited Disclosure at Filing

Whilst the Contracting Authority may argue that such is not a grievance per se, the Objector files this objection within the strict ten (10)-day period. At the date of filing, the Objector did not yet have the benefit of full disclosure of the evaluation report and the successful tender documents requested during the standstill (email of 26th September 2025) - Doc. B.

For the avoidance of doubt, this preliminary grievance is raised without attributing fault to any party and solely to record that limited access to documents constrains the level of detail possible within the statutory time-limit.

The Objector respectfully asks the Board to permit supplementation of this objection following disclosure, as this has prejudiced the Objector's right to a fair hearing.

Therefore, in view of the above, the Objector is as of now, hereby reserving its rights to the fullest extent possible, including but not limited to submit additional grievances and/ or to file judicial procedures for the safeguard of their rights and interests which have been hitherto breached and jeopardized.

In this respect, reference is made to the judgment of the Court of Appeal (Superior Jurisdiction) in the names "South Lease Limited vs Central Procurement and Supplies Unit et" decided on the 22/06/2022, where the said Court of Appeal stated the following:

" 7. Dwar il-mertu tal-appell, din il-Qorti tara li, ghallangas f'ubud mill-aggraji, is-socjeta rikorrenti ghandha ragun. L-enwelnett, jidher li l- Bord ma ppermettix li s-socjeta rikorrenti tipprezenta dokumenti u ssaqs domandi biex turi li l-vetturi tal-offerta tal-oblatur preferut u taghha huma tal-istess ghamla.

Il-Bord irrifjuta din it-talba peress li l- informazzjoni kienet, skont hu, "of a commercially sensitive nature." Din il-Qorti ma tagbilx ma' dan l-argument peress illi kull parti fi kwistjoni quddiem Tribunal kwazi gudiżżjarju (kif inhu l-Bord in kwistjoni) ghandu dritt ghal kull informazzjoni rilevanti ghall-każ tiegħu, u l-parti l-obra, speċjalment fejn ikun hemm dettalji teknici, trid tipprovdidi dik l- informazzjoniu mbux tinbeba wara n-natura kummerċjali kunfidenzjali tal- informazzjoni.

Speċjalment f'każijiet ta' din ix-xorta fejn, hafna drabi, l- għażla 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 għall-partijiet fil-kwistjoni, u li ma jinhargux kopji tad-dokumenti relattivi, iżda jübagħu issigillati f' envelop għall-uzju biss kif inghad. L-aversarju, pero, ghandu dritt jitolb mill-parti l-obra kull informazzjoni marbuta mal-każ u rilevanti għall-materja quddiem il-Bord. Wara kolloxx, is-socjeta appellanti tgħid li hi riedet informazzjoni dwar l-għamla tal-vetturi li l-konsorzju Health JV taspira li jkunu fit-torog Maltin, u allura din l-informazzjoni ma' tista' gatt tkun megjusa ta natura kunfidenzjali."

The above-quoted judgment affirms the parties right to access relevant information for a fair hearing before a quasi-judicial tribunal. The Court stressed that, where information is sensitive, the Board may regulate access (e.g. sealed documents) rather than withhold it altogether. A similar principle was reflected in Saviour Galea, Joseph Galea u Christian Galea fisimhom u fisem Galea Cleaning Solutions JV vs Kunsill Lokali Hal Lija et (16/07/ 2024).

The Objector's request falls strictly within the parameters of the Court of Appeal's above-cited decision. **FURTHERMORE, the Objector requests, as an interim measure under Regulation 90(4) PPR, that prior to the scheduled hearing the CA be ordered to release the information requested in the second request and to provide copies of all documentation the Board deems relevant and ancillary.**

2. The Preferred Bidder's bid is not compliant

Without prejudice to the other grievances

A. ERA/ Waste Carrier Requirements

According to the Tender Dossier and related documentation, bidders were required to provide a vehicle duly registered with ERA and to operate in line with applicable legislation, including insurance and ERA guidance for waste management services. Under Section 3 - Terms of Reference, Clause 4.2.4 (Vehicle Type and GPP) (Note 3 - no rectifications allowed), the bidder was obliged to submit a copy of the registration document issued by ERA (Class A2). Bidders were required to prove that vehicles are duly registered with ERA to transport bulky refuse.

Under the PPR and the tender dossier, a bid is admissible only if the tenderer meets the selection and award criteria and its offer conforms to the technical specifications without being irregular, unacceptable, or unsuitable.

From the information available, the Preferred Bidder does not meet mandatory regulatory requirements for the transport of waste because:

- It is not listed as a valid ERA-registered waste carrier on the ERA Valid
- Waste Carriers List as at 22/09/2025, and
- No evidence has been produced of registered vehicles for the relevant waste classes, ERA tags, or a legally sufficient right of use (including exclusive availability) of compliant vehicles for the contract term.

Accordingly, the Preferred Bidder's offer is not compliant (and should have been excluded at technical evaluation).

B. Vehicle Compliance

The Tender requires a curtain-sided service vehicle meeting a specified low-emission threshold, namely that:

- the proposed vehicle shall be curtain-sided; and the engine/emission class satisfies the low-emission specification; and
- the continuous availability of such a vehicle for the contract.

A failure to prove conformity with mandatory specifications renders the offer non-compliant and inadmissible.

The name of the Preferred Bidder does not feature on the ERA Valid Waste Carriers List as at 22/09/2025, implying that any vehicles proposed are not registered in the Preferred Bidder's name. On its face, the submission does not establish a clear, binding relationship with any third-party vehicle owner that would lawfully transfer use, control, and regulatory coverage to the Preferred Bidder. In the absence of a compliant subcontracting declaration and authorisations, the offer fails the Tender's mandatory evidentiary requirements.

C. Failure to Verify Selection Criteria and Standing

The CA had a duty to verify that the Preferred Bidder satisfied selection criteria and regulatory standing appropriate to the contract, including valid authorisations/permits and lawful means of performance. The Objector is unaware whether such verification was carried out. It is incumbent on the CA to state what verification of ERA carrier status and registered vehicles was performed.

The Tender Dossier stipulates that a bidder shall provide the name(s) of subcontractors) and the relative percentage of works/services/ supplies to be subcontracted (Note 2). Any proposed subcontractor shall be evaluated in line with the Exclusion and Blacklisting Criteria.

If a subcontractor is relied upon to meet selection criteria, written commitments must be submitted and reliance must be verified. If the sub-contracting field is left empty, it is assumed that no sub-contracting will take place (0%).

In this regard, it is pertinent to refer to the ECJ judgement C-176/98 in the names "Holst Italia", [1999] ECR-I-8607, where the European Court of Justice stated the following:

"29. Thus, where, in order to prove its financial, economic and technical standing with a view to being admitted to participate in a tendering procedure, a company relies on the resources of entities or undertakings with which it is directly or indirectly linked, whatever the legal nature of these links may be, it must establish that it actually has available to it the resources of these entities or undertakings which it does not itself own and which are necessary for the performance of the contract..."

Accordingly, the CA should have required the Preferred Bidder to clarify how it intended to fulfil the Tender requirements with any third-party involvement and should have evaluated such third party rigorously.

Following these considerations, the CA must ensure compliance with applicable legal standards, including any specific regulations governing vehicle leasing arrangements, and verify the legality of any engagement between the Preferred Bidder and third parties. These considerations may be further developed at hearing.

Finally, the General Rules Governing Tenders, Clause 1.1 provide that the procedure is regulated by Maltese law and tenderers are deemed to know all relevant laws affecting the contract. All bids must at all times be compliant with Maltese law.

D. Breach of Equal Treatment, Transparency and Proportionality

Awarding to a bidder that cannot lawfully provide the service (no ERA carrier registration/ vehicle registration and no compliant curtain-sided low-emission vehicle) undermines equal treatment vis-à-vis compliant bidders and distorts competition. It also breaches the duty of transparency in documenting verifications and the proportionality principle by tolerating a material non-compliance.

CONCLUSION

In view of the above, and whilst reserving the right to make further submissions and present further evidence (especially in view of the fact that Objector has requested further information), the appellant humbly requests this Honourable Board:

1. Preliminary: In accordance with reg. 90(4), to order the defendants, or whosoever of them, to disclose any and all the information requested by the Objector in the first request and in the second request and to provide the Objector with copies of all the documents referred to by them, and this in compliance with their obligations in accordance with Regulation 40 of Subsidiary Legislation 601.03;
2. to order the Contracting Authority not proceed with the contract execution until a final decision is given to this Objection;
3. to order the fresh evaluation, through a newly appointed evaluation committee;
4. to order the full reimbursement of the deposit paid by the objector; and
5. Alternatively, issue any other declarations, orders, or directives deemed pertinent to the procurement process related to the tender in question.

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 19th February, 2026, in that:

Whereas, San Gwann Local Council (hereinafter "SGL") issued a call for "Tender for the Collection of Bulky Refuse and WEEE using Low Emission Service Vehicle for the San Gwann Local Council";

Whereas, by means of a letter dated 1st* September 2025, SGLC informed that Simply Clean Limited is the recommended bidder, whilst it recommended the excluded of all other bidders, subject to a standstill period;

Whereas, by means of an objection submitted on the 29th September 2025, Galea Cleaning Solutions JV (hereinafter "Appellant") submitted an objection based on the following grievances:-

1. Preliminary Grievance - The Request for Information is inadmissible

- 1.1 The appellant has raised a grievance in relation to his request for information sent via email on the 26th of September 2025. In the request for information, the appellant requested the following a complete evaluation report and the full offer of the preferred bidder.
- 1.2 The Contracting Authority respectfully submits that the request lodged by Galea Cleaning Solutions JV for the disclosure of (i) the complete evaluation report and (ii) the full offer of the preferred bidder, Simply Clean Limited, is inadmissible and must be rejected in its entirety.
- 1.3 Pursuant to Regulation 40 of the Public Procurement Regulations (S.L. 601.03), the Contracting Authority is bound to preserve the confidentiality of information provided by economic operators and may not disclose data which would prejudice legitimate commercial interests or distort competition. The appellant's request would inevitably entail the release of such confidential information, thereby breaching both the letter and spirit of the Regulation.
- 1.4 The applicable procurement rules do not grant a right to unlimited or speculative disclosure, particularly where the appellant has already been furnished with sufficient information to substantiate its claims. The request must thus be deemed excessive, unnecessary, and contrary to the principles of procedural economy and proportionality.
- 1.5 Without prejudice to the above, it is noted that while economic operators may be entitled to limited access to information, such entitlement must remain relevant to the issues raised, proportionate in scope, and not anti-competitive or capable of being abused as a means to gain access to a competitor's information.

1.6 In the context under review, there is a clear and material difference between the limited right to information envisaged under Regulation 40 of S.L. 601.03 and the unfounded and disproportionate request made by the appellant. Compliance with the latter would not advance the legitimate purpose of ensuring transparency, but rather risk distorting competition and undermining trust in procurement processes.

1.7 This was reiterated in the judgment of the Court of Justice of the European Union in *Antea Polska S.A. v Państwowe Gospodarstwo Wodne Wody Polskie* (C-54/21), wherein it was held that:

"The principal objective of the EU rules on public procurement is to ensure undistorted competition, and, in order to achieve that objective, it is important that contracting authorities do not release information relating to public procurement procedures which could be used to distort competition, whether in an ongoing procurement procedure or in subsequent procedures. Since public procurement procedures are founded on a relationship of trust between contracting authorities and participating economic operators, those operators must be able to communicate any relevant information... without fear that the authorities will communicate to third parties items of information whose disclosure could be damaging to those operators."

[added emphasis]

1.8 In light of the above, the Contracting Authority respectfully maintains that the appellant's request is inadmissible by virtue Regulation 40 of S.L. 601.03.

2. Reply to sole grievance - Preferred Bidder's bid is compliant

2.1 The appellant raised one sole grievance in its objection, alleging that the preferred bidder bid is not compliant with the tender specifications.

2.2 At the very outset, the Contracting Authority submits that this grievance is speculative and is thereby nothing more than a fishing expedition, making several inferences throughout the objection, such as *'the Objection was unaware that such verification was carried out'*.

2.3 Without prejudice to any other argument, herein determined, it is the position of the Contracting Authority that the objection runs counter to Regulation 270 of S.L. 601.03 wherein it is stated that the objection *'shall contain in a very clear manner the reasons for their complaints'*.

A. ERA/Waste Carrier Requirements

2.4 The appellant submits that the recommended bidder is not compliant with the ERA/Waste Carrier Requirements. Whilst this is an assumption by the appellant, the Contracting Authority submits that the recommended bidder's offer was the cheapest administratively & technically compliant tender and thereby was recommended for award.

2.5 Thereby, any claims that the offer by the recommended bidder was not technically compliant is being rejected as unfounded.

B. Vehicle Compliance

2.6 The Appellant in this instance is once again basing itself on speculations and assumptions, and this by stating that the recommended bidders vehicles are not compliant.

2.7 The objector seems to overlook to fact that economic operators, where able to sub-contract portions of the tender, and/or in accordance with reg. 235 of S.L. 601.03 rely on the capacities of third parties.

2.8 Thereby any claims that the offer by the recommended bidder was not technically compliant, are once again refuted and totally rejected.

C. Failure to Verify Selection Criteria and Standing

2.9 It is difficult to understand what the appellant is hereby alleging, in particular since the evidence whatsoever has been provided to substantiate the alleged failures by the Technical Evaluation Committee.

2.10 Once again such allegations are being refuted as unfounded in fact and at law.

2.11 For clarities sake, both the recommended bidder and the appellant were found to be fully technically compliant, but the recommended bidder's offer was cheapest compliant.

D. Breach of Equal Treatment, Transparency and Proportionality

2.12 The appellant is once again alleging non-compliance, without producing any shred of evidence or substantiates its arguments in any manner. This objection sounds like a fishing expedition gone wrong!

2.13 The Contracting Authority makes it amply clear that, the rules of engagement were clear and any deviation therefrom would result in a breach of the self-limitation principle.

NOWHEREFORE, whilst reserving the right to put forward any other submissions, SGLC hereby requests CRB to reject the objection in its entirety.

Finally, the Contracting Authority hereby declares that, if the objector withdraws the objection in a timely manner, it will have no objection to the refund of the deposit paid.

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

This Board, having examined in detail all documentation relevant to the present appeal, having heard the full submissions of all interested parties, having carefully assessed the testimony of the witnesses duly summoned, and having reflected on the procedural and substantive dimensions of the case, now proceeds to deliver its comprehensive and reasoned decision.

Considerations of the Board

This appeal concerns the legality of the award recommendation issued by the San Ġwann Local Council in respect of Tender SGLC/T/01/2025 for the collection of bulky refuse and WEEE using a low-emission service vehicle.

The award criterion was the lowest price among offers that were administratively and technically compliant.

The Appellant, Galea Cleaning Solutions JV, contends that the recommended award to Simply Clean Ltd is unlawful on the basis of non-compliance with mandatory technical and regulatory requirements, as well as alleged breaches of transparency and equal treatment. The Contracting Authority maintains that the preferred bidder was fully compliant and that the objection is speculative and unsupported.

The Board shall address, in turn, the preliminary grievance relating to disclosure, the substantive allegations of non-compliance, and the alleged breach of general principles.

I. The Preliminary Grievance: Disclosure and Regulation 40 PPR

The Appellant submits that it was constrained in the formulation of its objection due to the absence of full disclosure of the evaluation report and the preferred bidder's full offer. It relies on Regulation 40 of S.L. 601.03 and on jurisprudence of the Court of Appeal (Superior Jurisdiction), notably *South Lease Limited vs*

Central Procurement and Supplies Unit et (22nd June, 2022), to argue that effective access to relevant information is intrinsic to the right to a fair hearing before a quasi-judicial tribunal.

The Contracting Authority, for its part, invokes Regulation 40 and the judgment of the Court of Justice of the European Union in *Antea Polska S.A. v Państwowe Gospodarstwo Wodne Wody Polskie*, to argue that disclosure of a complete evaluation report and the entirety of a competitor's bid would violate commercial confidentiality and distort competition.

The Board observes that Regulation 40 embodies a dual obligation. On the one hand, transparency is sufficient to permit effective review, whereas on the other, protection of legitimate commercial interests.

These objectives are not mutually exclusive. The jurisprudence cited by both parties confirms that a contracting authority is not obliged to grant unrestricted access to a competitor's full offer; yet nor may it frustrate the right of review by withholding all meaningful information under the guise of confidentiality.

The correct approach, as recognised by both domestic and European jurisprudence, is one of calibrated disclosure. Where specific elements of a competitor's bid are directly relevant to a pleaded ground of challenge, particularly compliance with mandatory technical specifications, the Board is empowered to regulate access, including inspection *in camera* or subject to confidentiality undertakings.

In this context, on the 12th November, 2025, the Board issued an interim Decree as follows:

Interim Decree on Request for Disclosure of Information
Tender Reference: SGLC/T/01/2025
Appellant: Galea Cleaning Solutions JV
Respondent: San Ġwann Local Council (Contracting Authority)
Date: [12th November, 2025]

1. Introduction

The Board has before it a request submitted by Galea Cleaning Solutions JV seeking the disclosure of (i) the complete evaluation report, including all scores and reasons for the award decision, and (ii) the full offer submitted by the successful tenderer, Simply Clean Ltd. The Contracting Authority has objected to such disclosure on the grounds of confidentiality and inadmissibility under Regulation 40 of the Public Procurement Regulations (S.L. 601.03).

2. Legal Framework

The Board recalls that Regulation 40 of the Public Procurement Regulations obliges contracting authorities to safeguard confidential information provided by economic operators, particularly information which could prejudice legitimate commercial interests or distort competition.

Nevertheless, this obligation must be read in light of the general principles of transparency, equal treatment, and effective review.

Accordingly, a balance must be struck between protecting confidentiality and ensuring that an appellant has access to sufficient information to pursue an effective remedy.

3. Considerations of the Board

Having examined the parties' submissions, the Board observes:

The appellant's request for the evaluation report is partially justified insofar as it seeks to understand the scoring rationale and comparative assessment that led to the award decision.

However, disclosure of the entire evaluation report in unredacted form could reveal confidential data or internal deliberations, thereby breaching Regulation 40.

The request for the successful bidder's full offer is disproportionate and risks exposing commercially sensitive details unrelated to the grounds of appeal.

The Contracting Authority's blanket refusal to disclose any material, however, is excessive and inconsistent with the duty of transparency and the appellant's right to effective review

4. Decision

For these reasons, the Board hereby decrees as follows:

The Contracting Authority shall, within five (5) working days of receipt of this decree, provide to the appellant:

- 1. A redacted version of the evaluation report, disclosing all scoring tables, evaluators' comments (where not confidential), and the reasoning underpinning the award decision; and*
- 2. A summary extract of the successful bidder's offer, indicating the principal technical and financial elements that were decisive for award purposes, duly redacted to protect any confidential or proprietary information.*
- 3. The Board shall retain access in camera to the complete, unredacted documentation to satisfy itself that confidentiality is properly maintained.*

4. All disclosed material shall be treated by the appellant as strictly confidential and used solely for the purposes of the review proceedings.

5. Save as above, the remainder of the appellant's request is hereby rejected.

The Board finds that the appellant's right to information must be balanced against the Contracting Authority's duty of confidentiality. Transparency and confidentiality are complementary, not opposing, principles; neither may be pursued to the absolute exclusion of the other.

Accordingly, this Decree achieves proportional disclosure consistent with Regulation 40 of S.L. 601.03, EU jurisprudence, and the principles of good administration.

For the avoidance of doubt, this decree is interim in nature and does not prejudice the substantive determination of the Appellant's objection on the merits. Its sole purpose is to secure a fair, orderly, and transparent continuation of the proceedings pending final adjudication.

Chairperson

Pursuant to the Board's Decree, the Contracting Authority, on the 19th November, 2025, duly disseminated the documentation thereby requested. Further to the provision of such information, legal counsel for the appellant addressed an email, likewise dated the 19th November, 2025, to legal counsel for the Contracting Authority, seeking additional clarification and disclosure.

In that correspondence, it was expressly observed that, whilst the evaluation report records that Simply Clean Ltd, being the preferred bidder, had replied to the rectification request and was consequently marked as compliant ("Yes"), the substantive content of that reply does not appear in the report itself nor within any of its annexes.

To that end, the appellant formally requested to be furnished with the specific reply submitted by Simply Clean Ltd in response to the rectification request, in so far as it concerned the logbooks and the amended ESPD.

By email dated 20th November, 2025, the Contracting Authority replied, stating that, with respect to the recommended bidder's rectification reply, it was not in a position to disclose the rectification request on the basis that it contained commercially sensitive information.

Thereafter, by further correspondence, legal counsel for the appellant reiterated and insisted upon the disclosure of the reply in question, maintaining that the information sought remained indispensable for the

proper exercise of the appellant's rights of review and effective challenge. In response, the Contracting Authority reaffirmed its earlier position, reiterating that it was not in a position to disclose the recommended bidder's rectification reply, on the grounds that the same encompassed commercially sensitive information, and accordingly maintained its refusal to accede to the appellant's request.

At the sitting held on 19th February, 2026, the appellant was duly afforded the opportunity to exercise his procedural rights in full, including the right to conduct the examination-in-chief of all witnesses summoned at his instance, and thereby to elicit, through their testimony, such information as was deemed relevant and material to the matters in issue before the Board.

In consequence of the comprehensive exercise of that right, and in light of the breadth of inquiry thereby permitted, the first grievance was addressed in its entirety and exhaustively ventilated before the Board, with the result that it was rendered devoid of any residual substance and, accordingly, became redundant.

II. The Alleged Non-Compliance: ERA Registration and Vehicle Requirements

The crux of the dispute lies in the allegation that Simply Clean Ltd does not satisfy mandatory requirements concerning:

1. Registration as a valid waste carrier with the Environment and Resources Authority (ERA);
2. Registration and authorisation of vehicles for the relevant waste classes;
3. Provision of a curtain-sided, low-emission vehicle with continuous availability.

The Appellant relies principally on the absence of Simply Clean Ltd from a publicly available ERA "*Valid Waste Carriers List*" as at the 22nd September, 2025, and contends that no evidence has been produced of compliant vehicles or of a legally sufficient right of use thereof.

The Board notes at the outset that, under procurement law, compliance is assessed on the basis of the documentation submitted within the tender. A bidder must furnish documentary proof of conformity with mandatory technical specifications, particularly where the dossier stipulates "*no rectifications allowed.*" Failure to submit required documentary evidence ordinarily results in exclusion.

During the course of the appeal proceedings, the appellant laid considerable and sustained emphasis upon the points in issue as framed in his submissions, seeking to demonstrate, through oral and documentary evidence, that the preferred bidder had failed to satisfy what he contended were mandatory technical requirements of the tender dossier.

In particular, the appellant proceeded to examine the representative of TM, who was called to testify *inter alia* on matters pertaining to the logbooks of the vehicles referenced in the tender submission of the recommended bidder.

In the course of his testimony, the TM representative stated that the logbooks in question (pertaining to the Recommended Bidder) corresponded to the following vehicles: (i) a truck; (ii) a truck equipped with a tail lift; (iii) a truck; and (iv) a drop-side truck.

Building upon this testimony, the appellant placed marked reliance on the assertion that, as described by the TM representative, the vehicles evidenced by the logbooks lacked what the appellant characterised as an essential ingredient expressly required by the tender documentation, namely, the provision of a curtain-sided truck. It was contended that the absence of a logbook expressly denoting a curtain-sided configuration constituted a material deficiency and, by extension, a ground of non-compliance.

The recommended bidder, for its part, countered this line of argumentation by directing the Board's attention to the photographic evidence forming part of its tender submission, which was duly available to and examined by the Board. These photographs, clearly depicted the vehicle bearing registration number JCO-479 as being a drop-side truck which was additionally fitted with a curtain mechanism, albeit one that was capable of being drawn up and down rather than permanently affixed in the conventional curtain-sided configuration. On that basis, the recommended bidder maintained that the substance of the requirement had, in fact, been met.

The appellant further contended that page 15 of the tender document, and in particular clause 4.2.4 entitled "*Vehicle Type and GPP*", made explicit reference to curtain-sided trucks and therefore substantiated his position.

In point of fact, the Board observes that such a reference is indeed contained within that clause.

However, the Board equally notes that clause 4.2.4 employs the nomenclature "*The Contractor*" rather than "*The Economic Operator*". This distinction is neither incidental nor devoid of legal consequence. The terminology adopted in the clause, read in its proper contextual and purposive construction, clearly pertains to obligations incumbent upon the contractor during the post-award phase of contract performance, rather than to pre-award requirements governing the admissibility or technical compliance of a tender submission. The deliberate use of the term "*Contractor*" leads the Board to understand and interpret the clause as regulating a specified period subsequent to the conclusion of the tendering stages.

At this juncture, and within the confines of its appellate jurisdiction, the Board is not vested with the competence to investigate or adjudicate upon matters pertaining to "*post-contractual*" performance requirements, which fall outside the scope of the present proceedings.

Furthermore, the Board recalls that Regulation 235(1) of Subsidiary Legislation 601.03 expressly empowers any economic operator to rely upon the capacities of third parties in order to satisfy selection or technical criteria.

At the tendering stage, the submission of a letter of intent or a letter of reliance is, as a matter of procurement law, sufficient to demonstrate the availability of such capacity, without necessitating the production of documentary proof, such as logbooks, evidencing ownership or direct possession. In light of the foregoing, the Board is constrained to assess the appellant's arguments within the proper legal and procedural framework governing the tendering phase, and not by reference to obligations that crystallise only upon the award of contract.

It is to be further pointed out that the Appellant's argument rests exclusively on an inference drawn from a public list. It has not demonstrated that:

- The tender dossier required that the waste carrier registration be in the name of the tenderer itself, to the exclusion of reliance on third parties;
- The preferred bidder failed to submit the ERA registration document required under Clause 4.2.4;
- The evaluation committee omitted to verify the submitted ERA documentation.

The Contracting Authority has categorically stated that both the Appellant and the preferred bidder were found technically compliant and that the award was made to the cheapest compliant offer.

The Board must be guided by a fundamental principle. It is not sufficient for an objector to cast doubt but it must establish, on a balance of probabilities, that a material non-compliance occurred. Public procurement review is not an evidential fishing expedition.

If the preferred bidder relied on third-party resources or subcontractors, this is permissible in principle under Regulation 235 PPR and in light of the judgment of the Court of Justice in *Holst Italia SpA v Comune di Cagliari*. That judgment makes clear that reliance on third-party capacities is lawful provided that the bidder proves it will have those resources at its disposal for performance of the contract.

Thus, the decisive question is not whether the ERA registration appears in the preferred bidder's name on a public list, but whether the tender submission included valid ERA documentation and, where applicable, binding commitments from third parties ensuring lawful and continuous availability.

On the evidence presently before the Board, there is no proof that such documentation was absent. The Appellant's case is built on external verification rather than on a demonstrated *lacuna* in the tender file.

In the absence of concrete evidence that:

- The mandatory ERA registration document was not submitted;
- The required vehicle documentation was missing;
- The technical specification concerning curtain-sided and low-emission status was not satisfied;

the Board cannot conclude that the evaluation committee acted unlawfully.

III. Alleged Failure to Verify Selection Criteria

The Appellant further argues that the Contracting Authority failed in its duty to verify regulatory standing and compliance.

This submission is framed in speculative language (“*the Objector is unaware whether such verification was carried out*”). A mere assertion of uncertainty does not displace the presumption of regularity attaching to administrative acts.

It is a trite law that evaluation committees are presumed to have acted within the four corners of the tender dossier unless cogent evidence indicates otherwise. The Board is not invited to substitute its own technical assessment absent proof of manifest error, misapplication of criteria, or procedural irregularity.

No such proof has been adduced.

IV. Equal Treatment, Transparency, and Proportionality

The principles of equal treatment and transparency are indeed cornerstones of public procurement. They demand strict adherence to the tender conditions and consistent treatment of bidders.

Yet those principles operate in both directions. A compliant bidder offering the lowest price is entitled to the benefit of the award criterion. To displace that outcome, there must be a demonstrated material breach.

To annul an award based on conjecture would itself offend proportionality and legal certainty. Procurement procedures cannot be paralysed by unsubstantiated suspicion.

Conclusion

Having examined the pleadings, documentary references, and legal arguments advanced, the Board finds as follows:

1. The request for blanket disclosure of the complete evaluation report and full offer of the preferred bidder had been dealt with in the Board’s Decree dated 12th November, 2025 and following the hearing of the 19th February, 2026, allowing a comprehensive exercise of the appellant’s rights to examine and cross-examine all witnesses summoned, and in light of the breadth of inquiry thereby

permitted, the first grievance was addressed in its entirety and exhaustively ventilated before the Board, with the result that it was rendered devoid of any residual substance and, accordingly, became redundant.

2. The Appellant has failed to establish, on the balance of probabilities, that the preferred bidder's offer was administratively or technically non-compliant.
3. The allegations concerning ERA registration, vehicle compliance, and verification of selection criteria are speculative and unsupported by evidence demonstrating manifest error or breach of mandatory provisions.
4. No breach of the principles of equal treatment, transparency, or proportionality has been substantiated.

Accordingly, the objection is rejected in its entirety.

Decision

Therefore, for the reasons set out above, the Board hereby:

1. Rejects the objection filed by the Appellant company Cleaning Solutions JV;
2. Confirms the decision and conclusions of the Evaluation Committee, including the Letter of Rejection dated 19th September, 2025 addressed to the appellant and the Letter of Acceptance dated 19th September, 2025 addressed to Simply Clean Limited which were both transmitted to the parties by the Contracting Authority;
3. Rejects the Appellant's fourth grievance and orders that the administrative deposit paid by the Appellant not to be reimbursed in accordance with the applicable Regulations.

Dr Vincent Micallef
Chairman

Ing. Dr Damien Gatt
Member

Dr Maria Cardona
Member