

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 2237 – ZLC 3/2025 – Tender for the Cleaning and Clearing of Non-Urban Roads in Haz Zabbar in an Environmentally Friendly Manner**

**11<sup>th</sup> May, 2026**

The Board,

Having noted the letter of objection filed by Mr Alexander Azzopardi acting for and on behalf of Agribrands Limited (hereinafter referred to as the "Appellant"), filed on the 3<sup>rd</sup> March 2026;

Having also noted the letter of reply filed by Dr Dustin Camilleri acting on behalf of EMA Advocates Malta, acting for and on behalf of the Haz-Zabbar Local Council (hereinafter referred to as the "Contracting Authority"), filed on the 9<sup>th</sup> March 2026;

Having heard and evaluated the testimony of the witness of Mr Brian Farrugia, summoned by Dr Noel Bezzina, acting for Agribrands Limited, the appellant;

Having taken cognisance of and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 5<sup>th</sup> May, 2026, hereunder reproduced:

### **Minutes**

Case 2237 – Objection – ZLC 3/2025 – Tender for the Cleaning and Clearing of Non-Urban Roads in Haz-Zabbar in an Environmentally Friendly Manner.

The Tender was issued on the 23<sup>rd</sup> of December 2025, and the closing date was 23<sup>rd</sup> January 2026.

The estimated value of the tender, excluding VAT, was €30,000

On 3<sup>rd</sup> March 2026, Agribrands Limited, lodged an appeal against The Zabbar Local Council– the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 5<sup>th</sup> of May 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Maria Cardona and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €400 was paid.

There were Ten bids.

The attendance for this public hearing was as follows:

#### **Appellant – Agribrands Limited.**

Dr Noel Bezzina – Legal Representative.

Mr Alexander Azzopardi – Company Representative.

Ms Anastasiia Radchenko – Company Representative.

**Contracting Authority – Zabbar Local Council.**

Dr Dustin Camilleri – Legal Representative.

Ms Stephanie Testaferrata de Noto – Head of Contracting Authority.

Mr Jorge Grech – Chairperson.

Mr Brian Farrugia – Evaluator.

Mr Chris Falzon – Drafter -Tender Specifications.

**Recommended Bidder – Malta Recycle and Waste Collection Limited.**

Mr Twanny Barun – Company Representative.

**Opening Statements**

The Chairman welcomed the parties present and formally opened Case Number 2237 in the records of the PCRB. The Chairman identified the Appellant as Agribands Limited., the Contracting Authority as The Zabbar Local Council, and representative of the recommended bidder, Malta Recycle and Waste Collection Limited.

The Chairman invited the legal representative for the Appellant to make the initial submissions.

**Initial Submissions**

**Initial Submissions by Dr Noel Bezzina (for the Appellant).**

Dr Noel Bezzina noted that one of the tender requirements was that an operator had to possess an employment licence in accordance with the recent law. The appellant contends that this requirement was not satisfied by any operator, and that the Evaluation Committee failed to properly assess this requirement.

**Initial Submissions by Dr Dustin Camilleri (for the Contracting Authority).**

Dr Dustin Camilleri stated that, in this particular circumstance, such a licence was not required, and that a self-declaration was permitted. This declaration was duly submitted.

**Witness**

Mr Brian Farrugia (ID no. 102282M), summoned by Dr Noel Bezzina.

Mr Brian Farrugia, an evaluator, explained how the tender was awarded to Twanny Barun, particularly in relation to the employment licence. He stated that one of the regulations of the PPR concerned eligibility.

The requirement specified that the awarded bidder had to present an employment licence after the award. In a clause submitted by the bidder, he had declared that he was self-employed. The evaluators sought legal advice (SL 452), which applied to workers employed by the operator. This situation fell outside the scope of the legislation, and therefore there was no reason for disqualification on that basis.

The Contracting Authority understood that a self-employed individual would personally perform the requested work by himself. Dr Bezzina quoted:

*“We hereby declare that such criterion does not apply to our services, as the undersigned is a self-employed and do not employ persons other than family members since it is a family run business”.*

Mr Farrugia understood that, since the bidder was self-employed, he had no salaried employees. A clarification was not requested because, according to the law, there was no employment agency involved. The local council’s feedback was that the work could be carried out by one person.

Dr Bezzina quoted:

*“The contractor is to have the adequate staff to perform the services required including back-up staff. The economic operator shall have also back up staff in case or emergencies”.*

He then asked the witness whether the Committee had verified this requirement, as it was one of the conditions in the tender. The witness replied that they noted the operator was self-employed and assisted by family members, who were not formally employed.

Dr Bezzina pointed out the phrase *“do not employ persons other than family members”*. The witness stated that he understood that family members assisted him.

Dr Bezzina called Mr Barun to testify but then decided to proceed directly to the Final Submissions.

## **Final Submissions**

### **Final Submissions by Dr Noel Bezzina (for the Appellant).**

Dr Bezzina stated that the core issue concerns the licence referred to in Chapter 452.130. The manner in which the tender was drafted and adjudicated does not clearly establish whether Mr Twanny Barun qualifies as an employment agency. In his declaration, he stated:

*“We hereby declare that such criterion does not apply to our services, as the undersigned is a self-employed and do not employ persons other than family members”.*

It could be interpreted that the family members were employed, which would fall under the definition of an employment business in the law. Additionally, the bidder indicated that *“notwithstanding the fact that he was self-employed”*, he still applied for an employment licence. In these circumstances, the procurement process should not have been conducted in this manner, particularly since no clarification was issued and no request for a list from Jobsplus was made.

He referred to Point F:

*“Also, from the works requested, it is also clear that such works could be made by one person”.*

However, it is questionable whether a single individual could perform all the work requested in the tender form on page 14, where both *“Mechanical and Manual”* tasks are required. This constituted one of the grievances in the appeal.

Another requirement, on page 20 of the tender, calls for adequate staff, yet the Evaluation Committee accepted a self-employed individual who would perform the work alone. It is unrealistic to assume that family members would assist on a purely voluntary basis. This tender should not have been awarded to the recommended bidder, given both the practical impossibility of performance and the lack of clarity regarding the employment licence.

Dr Bezzina maintained that the family members should be considered employees.

### **Final Submissions by Dr Dustin Camilleri (for the Contracting Authority).**

Dr Camilleri referred to Law SL 452.130, which provides that an entity or commercial company qualifies as an employment agency or employment business. The purpose of the licence is not to authorise the employment of workers per se, but rather to allow the hiring out of workers. This was not the case in the bidder's circumstances.

As a self-employed individual, and subject to applicable permissions, he may employ workers. The provisions of Law 452.130 should not be conflated with those applicable to a standard employer. When employing a Maltese citizen, an EU national, or a third-country national, such a licence is not required. The requirement in the tender documentation referred specifically to entities engaged in the hiring out of workers.

The recommended bidder did not even require the self-declaration; however, it was nevertheless requested. The preferred bidder complied fully with all requirements set out in the tender documentation.

### **Conclusion of the Hearing**

With no further arguments presented, Chairman Mr Kenneth Swain thanked the parties and formally concluded the session.

---

### **Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 5<sup>th</sup> May, 2026.

Having noted the objection filed by Agribrands Limited (hereinafter referred to as the "Appellant") on the 3<sup>rd</sup> March 2026 and refers to the claims made by the same Appellant with regards to the tender of reference ZLC 3/2025 listed as case No. 2237 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Noel Bezzina

Appearing for the Contracting Authority: Dr Dustin Camilleri

Whereby, the Appellant contends with respect to:

a) ***Ground 1 — The Recommended Bidder is Ineligible and Should Have Been Disqualified***

The tender unequivocally requires that operators providing employment agency or outsourcing activities must hold a DIER licence in terms of S.L. 452.130.

The tender further specifies:

*"The Contracting Authority shall NOT endorse the Contract Agreement if the copy of the Licence is not submitted."*

The Recommended Bidder - Malta Recycle and Waste Collection Limited:

- a. does not possess the DIER licence required by law;
- b. cannot obtain such licence within the legally required timeframes; and therefore could never fulfil the mandatory eligibility requirement.

A bidder who cannot meet a statutory obligation cannot be considered eligible, and the decision to recommend such bidder is fundamentally irregular and ultra vires.

b) ***Ground 2 — The Contracting Authority Has Acted in Violation of Its Own Tender Conditions***

This is not a matter of interpretation — it is a matter of legal obligation.

The tender conditions impose a mandatory requirement that the Recommended Awardee must:

- a. demonstrate the ability to obtain a DIER licence before contract signing,
- b. and supply the licence together with the contract agreement.

Awarding the tender to an operator who clearly lacks the eligibility to meet this requirement is a serious breach of the tender's own rules. No authority may "recommend now and verify later" when the operator has no legal basis to operate. This is an irregularity of the highest order.

c) ***Ground 3— The Recommended Bidder Is Structurally Incapable of Complying with S.L.452.130***

S.L. 452.130 is not optional. It is not flexible. It is not a "nice to have".

It is a legal requirement governing employment agencies and outsourcing businesses in Malta.

An operator who lacks this licence is:

- a. not permitted to operate,
- b. not permitted to supply such services,
- c. and not permitted to execute the contract.

Therefore, recommending such an operator is tantamount to recommending the award of a contract to an entity legally prohibited from performing the services. This constitutes a grave administrative error that requires immediate correction.

d) ***Ground 4 — The Irregular Recommendation Causes Serious and Immediate Prejudice***

Because our Economic Operator is the next-ranked fully compliant bidder, the unlawful recommendation directly deprives us of the contract. This prejudice is not hypothetical — it is direct, quantifiable, and irreversible unless remedied by this Board. Allowing an unlicensed operator to retain the award would:

- distort the competitive process,
- reward non-compliance, and
- undermine the rule of law in public procurement.

The Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 9<sup>th</sup> March 2026 and its verbal submission during the hearing held on 05<sup>th</sup> May, 2026, in that:

- a) The local council does not agree with the argumentation put forward by the objector and in fact such did not place second in the adjudication.

- b) The Zabbar Local Council submits that the objector is not right in its legal argumentation due to references to section 5 of the tender document.
- c) It is quite clear from the above that the bidder may satisfy such if it presents either the DIER licence or submits a self-declaration whereby it declares that such licence shall be available at the moment of the signing of the Contract.
- d) It is humbly being submitted that any argumentation on whether. the winning bidder will be able to obtain such licence in the timeframe provided is highly premature and the Public Contracts Review Board should concentrate on the fact if the bidder either supplied the licence or made the self-declaration.
- e) In this regard, the Zabbar Local Council is presenting the Self-Declaration supplied by the winning bidder, marked as Doc ZLC2.
- f) Apart from the above, the self-declaration also contains the fact that the winning bidder shall be performing the requested works all by himself, which would not require such a licence. Also, from the works requested it is also clear that such works can be made by one person.

---

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 witness duly summoned, will now consider Appellant's grievances.

### **Considerations**

Section 1 of the Tender document point number 5, the **Selection and Award Requirements** clearly indicates that,

*"to be considered eligible for the award of the contract, economic operators must provide evidence that they meet or exceed certain minimum criteria described hereunder.*

*(A) Eligibility criteria*

*Economic operators are to complete the Eligibility Section through the tender response format.*

*If applicable, the necessary forms – such as the Power of Attorney, are to be uploaded through the tender response format by the Economic Operator, as indicated in the relevant fields of the tender structure.*

*In line with the Employment Agencies Regulations S.L.452.130, Economic Operators operating an Employment Agency or Employment Business shall be in possession of a Valid licence issued by the Department for Industrial and*

*Employment Relations (DIER), for a period of two (2) years beginning from the date specified in the license for its commencement. The said licence shall specify if the activity in Malta of the Employment Agency/Business is |:*

- I. *Recruitment of persons for employment in Malta or outside Malta; or*
- II. *To render one (1) or both of the following activities;*
- III. *Temporary Work agency and/ or*
- IV. *Outsourcing Agency.*

*Economic Operators shall submit a Self-Declaration whereby they declare that should they be the Recommended Awardee, prior to Contract Signing, they shall be in possession of a Valid or Conditional Licence, issued in accordance with the Employment Agencies Regulations (S.L.452.130), to operate an Employment Agency or Employment Business. Such Self-Declaration shall also specify that during Contract Execution Stage of the Procurement/Concession Procedure, Economic Operators (in their capacity as Contractors) shall, prior to the expiry of a valid Licence, renew the licence for further periods of two (2) years. Accordingly, the signed and dated Contract Agreement shall be accompanied by a copy of the said Licence and any other documentation as may be requested. For avoidance of doubt, it is being clarified that the Authority/Entity responsible for the 5 Version 2.8 Departmental e-procurement document Procurement/Concession Procedure shall not endorse the Contract Agreement if the aforementioned copy of the Licence is not submitted. Economic Operators shall also commit to adhere to any timeframes imposed by the Authority/Entity responsible for the Procurement/Concession Procedure vis-à-vis the submission of a Valid or Conditional Licence, issued in accordance with the Employment Agencies Regulations (S.L.452.130). Additional information on such licences may be viewed from the Department for Employment and Industrial Relations' (<https://employmentagencies.gov.mt/#/en/home>)”.*

The Board further observes that the self-declaration submitted by the Recommended Bidder does not satisfy this requirement in full. Indeed, whilst the Recommended Bidder states that the licence is allegedly not applicable to him because he is self-employed, and further states that if such licence is required he will acquire it and present it to the Local Council, the self-declaration is entirely silent on the further and separate requirement expressly laid down in the tender document, namely that during the Contract Execution Stage and prior to the expiry of a valid licence, the licence would be renewed for further periods of two (2) years. The omission of this part is material, since the tender did not merely require a generic declaration as to acquisition of the licence before contract signing, but expressly required a continuing undertaking covering the whole duration of contract execution.

Moreover, the wording adopted by the Recommended Bidder in its self-declaration gives rise to further difficulty. On the one hand, the Recommended Bidder states that the criterion does not apply because he is self-employed; on the other hand, he continues to declare that he does not employ persons other than family members, thereby suggesting that persons other than himself are in fact involved in the undertaking. In these circumstances, the self-declaration is not only incomplete, but also ambiguous in its terms, and cannot be said to satisfy with certainty the requirement imposed by the tender dossier.

The Appellant's grievances are intrinsically linked and arise from the same substantive legal issue, namely the interpretation, applicability and timing of the employment licence requirement contained within the tender document. The Board shall, for the reason that the grievances are interconnected and stem from the same underlying legal and factual issue, consider all grievances jointly for the purpose of its determination.

The Tender document states that the production of the licence is not necessary prior to the signing of the contract, however the obligation itself remains mandatory and indispensable for the lawful performance of the contract. The Recommended Bidder does not possess the employment licence required by law, and moreover failed to submit a self-declaration in the terms fully required by the tender document. In particular, the self-declaration omitted the mandatory undertaking relating to renewal of the licence during the execution stage of the contract.

In the circumstances, the Recommended Bidder could never validly satisfy a mandatory condition precedent to the execution of the contract in the manner required by the tender document. A Contracting Authority cannot lawfully recommend or proceed towards the award of a contract in favour of an operator that is objectively incapable of complying with mandatory legal and regulatory requirements governing the performance of the contract, nor in favour of an operator whose documentary undertaking falls short of the express wording prescribed by the tender itself.

The Contracting Authority nevertheless proceeded to recommend an operator who lacks the requisite licence and whose self-declaration is deficient in a material respect, in that it fails to include the mandatory commitment that the licence would, during contract execution, be renewed for further periods of two (2) years prior to expiry.

In so doing, the Contracting Authority acted contrary to its own tender conditions and in breach of the fundamental procurement principles of legality, transparency, equal treatment, and good administration. A Contracting Authority cannot lawfully recommend an economic operator whilst postponing verification of a mandatory legal requirement where the available facts already demonstrate that the operator lacks the legal basis necessary to perform the contract lawfully and where the self-declaration submitted is itself incomplete and non-compliant with the express requirements of the tender dossier.

**The Board,**

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

- a) To uphold the Appellant's concerns and grievances;
- b) To cancel the 'Notice of Award' letter dated 25<sup>th</sup> February 2026;
- c) To cancel the Letters of Rejection dated 25<sup>th</sup> February 2026 sent to Agribrands Limited;
- d) To order the contracting authority to re-evaluate the bids received in the tender through a newly constituted Evaluation Committee composed of members which were not involved in the original Evaluation Committee, whilst also taking into consideration this Board's findings;
- e) after taking all due consideration of the circumstances and outcome of this Letter of Objection, directs that the deposit be refunded to the Appellant.

**Mr Kenneth Swain**  
Chairman

**Dr Maria Cardona**  
Member

**Mr Lawrence Ancilleri**  
Member