MICHAEL SCIRIHA ADVOCATES

Public Contracts Review Board
Notre Dame Ravelin
Floriana – FRN 1600
Malta

Department of Contracts - Sectoral Procurement Directorate
Notre Dame Ravelin
Floriana – FRN 1600
Malta

Ambjent Malta
Ambjent Malta Head Office,
Premiere Business Center,
Constitution Street,
Mosta

27th August 2026

Re. Tender Reference SPD8/2026/042 - Framework Contract for the Provision of Environmentally Friendly Cleaning Services at Ambjent Malta

We are retained by Simply Clean Limited (C-101719) of "Ultimate", Triq Dun Salv Ciappara, Ħaż-Żebbuġ (the "Appellant") in relation to the captioned tender.

The Criteria for Award for the tender was the Best Price/Quality Ratio (BPQR).

The Appellant's offer for Tender Reference SPD8/2026/042 was rejected by the Department of Contracts in a letter sent by them on the 21st of August 2026 (but erroneously dated 31st August 2026). The reason given by the Department for the rejection of the Appellant's offer was that it "failed to satisfy the criterion for award, being the offer with the Best Price Quality Ratio (BPQR)", solely because of a marginal difference in score between the Appellant's offer and the recommended bidder's offer.

The Appellant's offer obtained an overall score of 99.46%, as against the score of 99.97% obtained by the recommended tenderer. This narrow difference is attributable entirely to a single point lost under sub-criterion C2(v) of the evaluation grid (Employment Conditions - Collective Agreement), which forms the sole subject of this objection. On every other sub-criterion of the evaluation grid the Appellant obtained full marks.

Instead, the Department of Contracts recommended the award of the tender to AGVHR Management for the amount of €144,726.40 excluding VAT, as the offer with the Best Price Quality Ratio (BPQR).

The Appellant feels aggrieved by such a decision of the Contracting Authority and is availing itself of the right granted to it in terms of the law and is filing an objection in regard to the aforementioned decision.

Objections

The objection being raised by the Appellant refers to the following criterion:

1. Criterion C2(v) – Employment Conditions – A Collective Agreement – pertaining to the subject of the tender/Lot. Kindly see Procurement Document for full details.

The Appellant obtained 5 out of the possible score of 6 under this sub-criterion, with the justification given by the Evaluation Committee being that "the information provided falls in line with the criteria in C2(v)(iv)". By contrast, the recommended tenderer, AGVHR Management, was awarded the full 6 points, on the basis that it "provided the information in line with Section C2(v)(v)".

The Procurement Document (pages 14 to16) sets out, at sub-criterion C2(v), five alternative limbs by reference to which points are allotted, the three relevant limbs reading as follows:

> *"(iii) An identical copy of an expired (i.e. Validity Period exceeds the demarcated 90 day period as per above definition) Collective Agreement duly signed by the involved parties and submitted by the Economic Operator to DIER. 4 points"*
>
> *"(iv) An identical copy of a valid Collective Agreement duly signed by the involved parties and submitted by the Economic Operator to DIER. 5 points"*
>
> *"(v) An identical copy of a valid Collective Agreement duly signed by the involved parties and submitted by the Economic Operator to DIER including the acknowledgement by DIER that the Collective Agreement has been submitted for registration at their end. 6 points"*

The Procurement Document further provides that "Validity of the Collective Agreement is deemed as having an expiry date that shall at least be for 90 days from the Submission Deadline of the Procurement Call".

It is significant that the Evaluation Committee did not score the Appellant's submission under limb (iii), which applies to an expired Collective Agreement and carries only 4 points. It expressly proceeded under limb (iv), i.e. on the footing that the Collective Agreement is valid. The decisive question raised by this objection is therefore whether the submission met the further requirement of limb (v) so as to merit 6 points rather than 5. That question is addressed under the Second Ground below.

The Appellant respectfully submits that the Evaluation Committee is mistaken on two grounds, in failing to award the Appellant the full 6 points available under sub-criterion C2(v).

First Ground: the Collective Agreement is valid and in force

The Appellant's Collective Agreement, entered into between Simply Clean Limited and the Hospitality & Food Section of the General Workers' Union on the 20th January 2023, provides at Article 4 (Duration) as follows:

> *"This Agreement shall be effective from 15th February 2023 and shall remain in force until 14th February 2026.*
>
> *At any time after 1st October 2025, either party may give notice in writing expressing its wish that this Agreement remains in force for a definite period and/or its intention to negotiate a new one. In the latter case, both parties shall engage in discussions on the terms and conditions of a new Agreement.*
>
> *During negotiations, and until a new Agreement is signed, the contents of this Agreement shall remain in force.*
>
> *In case that no notice for revision is made, the contents of this Agreement shall remain in force for an indefinite period or until notice is finally given and a new Agreement eventually signed."*

It is submitted that the above clause is a standard survival clause, the effect of which is that the Agreement does not lapse on the expiry of its initial three-year term, but continues in full force and effect indefinitely, unless and until a new agreement is negotiated and signed. No new agreement has been negotiated or signed, and no notice terminating the Agreement has been given by either party. The Agreement therefore remains, at the date of the Appellant's tender submission and at the date of this objection, fully valid and in force.

This clause, in fact, mirrors the clause considered by this Honourable Board in Case 1939 – SPD7/2023/028 (JF Services Ltd v Ministry for the Economy, European Funds and Lands), decided on the 12th December 2023. In that case, the collective agreement submitted by the appellant had, on its face, expired several years earlier, and contained the identical wording that "during negotiations, and until a new Agreement is signed, the contents of this Agreement shall remain in force". The Evaluation Committee had, for that reason, allotted only 4 out of 6 marks, treating the agreement as expired.

This Board disagreed, and held as follows:

> *"This Board opines that the Collective Agreement as presented by the Appellant is still in force, although the 'time frame' ... came to an end ... An expired 'time frame' does not implicitly mean an expired collective agreement ... the collective agreement submitted by the appellant shows that the collective agreement remains in force until such time that a new collective agreement is in place."*

The Board accordingly upheld the appeal, cancelled the letter of rejection, and ordered the Contracting Authority to re-evaluate the Appellant's bid on the basis that the collective agreement was valid and in force.

Therefore, in this case also, the Contracting Authority is bound by the terms of its own Procurement Document and cannot, in the assessment of what constitutes a "valid" Collective Agreement, disregard the effect of a survival clause that the Agreement itself, and the Board in its decisions, gives to it.

Second Ground: the Appellant satisfied every element of limb (v), not merely limb (iv)

Independently of the above, and even taking the Evaluation Committee's own approach to validity at face value, the Appellant's tender submission did not merely include "an identical copy of a valid Collective Agreement duly signed by the involved parties and submitted ... to DIER" (limb (iv)). It also included the letter issued by the Department for Industrial and Employment Relations (DIER), dated 25th January 2023, which reads:

> *"This is an acknowledgement of the Collective Agreement entered into between Simply Clean and the GWU covering period 15/02/23 – 14/02/26 has been received at DIER on the 25/01/2023 and registered in accordance."*

This is precisely the "acknowledgement by DIER that the Collective Agreement has been submitted for registration at their end" which limb (v) requires in addition to the signed Agreement. The Appellant's submission accordingly included every document required by limb (v): (i) an identical copy of the Collective Agreement, duly signed by both the Company and the Union, and (ii) DIER's written acknowledgement that the Agreement had been received and registered. There was, on the documentation actually before the Evaluation Committee, no proper basis to score the submission under limb (iv) (5 points) rather than limb (v) (6 points).

It is respectfully submitted that both the Collective Agreement and the DIER acknowledgement letter were before the Evaluation Committee at the time of evaluation, and this objection concerns the correct application of the Procurement Document's own scoring criteria to documentation already submitted, an exercise that falls within this Board's competence, as recognised in Case 1939.

For these reasons, the Appellant should have been awarded the full 6 points (100%) under sub-criterion C2(v), which alone would have been sufficient to overturn the ranking of the tender in the Appellant's favour.

In view of the above, and whilst reserving the right to make further submissions and to present additional evidence, the Appellant respectfully requests this Honourable Board to revoke the decision taken by the Contracting Authority on 21st August 2026 in relation to the *Tender Reference SPD8/2026/042 - Framework Contract for the Provision of Environmentally Friendly Cleaning Services at Ambjent Malta*, and to order the Contracting Authority to award the Appellant the full 6 points under sub-criterion C2(v), to order the Contracting Authority to re-evaluate the ranking of the tender accordingly, and to order the refund of the deposit to the Appellant. Alternatively, the Appellant requests the Board to issue such declarations, orders, or directives as it may deem appropriate in relation to the procurement process concerning the tender in question.

With a reservation for the expenses incurred by the Appellant in relation to the Contract and tender in question.

Av Franco Galea

Av Daniel Cutajar

BOV
Bank of Valletta

Bank of Valletta p.l.c
Registration Number: C 2833
Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

Pay third party

Printed by: Mr. Melchiore Dimech
Printed on: 26/08/2026 - 17:35
Document ID: 29526436

Transaction details

Payee type:	Personal Payee
Is the payee a joint beneficiary:	No
Payee name:	PCRB
Payee surname:	GOV
Relation:	Financial Services
Reason:	Other
Payment details:	APPEAL FROM AMBJENT TENDER
Currency:	EUR - Euro
Beneficiary IBAN/Account:	MT55MALT011000040001EURCMG5001H
Beneficiary IBAN/Account type:	Valid IBAN of country - Malta
Bank name:	Other bank
Bank address / Bank's BIC:	Let the bank apply the beneficiary bank BIC
Beneficiary address:	No
From account:	4001582822 4 (EUR)
Charges should be paid by:	Shared - I pay BOV charges; pays the beneficiary bank charges
Amount:	EUR 733.00
BOV to transfer the money:	as soon as possible
Receiving bank to get the money as:	normal priority payment
FPAD Result:	The name you entered does not match our records. If you continue, the payment may be sent to the wrong person, and recovery may not be possible as it could result in fraud. This Verification of Payee check will not block the payment, but it is simply providing additional security. Please verify the payment details with the recipient before proceeding.
Saved template:	no

Additional information

Credit amount:	EUR 733.00
Debited amount (excluding charges):	EUR 733.00
Estimated amount to be withdrawn from account:	EUR 734.00
Transaction charge:	EUR 1.00

Transaction result

Status:	Your instructions have been processed successfully.
Transaction ID:	184388417