

PUBLIC CONTRACTS REVIEW BOARD

Case 2222 – BLC04/2025 – Service Tender for the Collection of Bulky Refuse and WEEE using Low Emission Service Vehicle for the Hal Balzan Local Council

10th September 2026

The Board,

Having noted the letter of objection filed by Dr Lennox Vella on behalf of Malta Recycle & Waste Collection Limited, (hereinafter referred to as the appellant) filed on the 11th December 2025;

Having also noted the letter of reply filed by Dr Christopher L. Vella acting for and on behalf of Hal Balzan Local Council (hereinafter referred to as the Contracting Authority) filed on the 19th December 2025;

Having heard and evaluated the testimony of the witness Ms Marie Claire Tabone (ID: 71576M) as summoned by Dr Christopher L. Vella for and on behalf of the Contracting Authority;

Having heard and evaluated the testimony of the witness Dr Angelo Micallef (ID: 0125286M), Chairperson of the Evaluation Committee, as summoned by Dr Christopher L. Vella for and on behalf of the Contracting Authority;

Having heard and evaluated the testimony of the witness Mr Twanny Barun (ID: 573083M), Director of Malta Recycle & Waste Collection Limited, as summoned by Dr Christopher L. Vella for and on behalf of the Contracting Authority;

Having taken cognisance 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 3rd March 2026 hereunder reproduced.

Minutes

Case 2222 Objection – BLC04/2025 – Service Tender for the Collection of Bulky Refuse and WEEE using Low Emission Service Vehicle for the Hal-Balzan Local Council.

The Tender was issued on the 26th of August 2025, and the closing date was 26th September 2025.

The estimated value of the tender, excluding VAT, was €28,000.

On the 11th of December 2025, Malta Recycle & Waste Collection Limited lodged an appeal against Hal-Balzan Local Council – the Contracting Authority.

On the 3rd of March 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Dr Vincent Micallef as members, convened a public hearing to consider the appeal.

A deposit of €400 was paid.

There were six bids.

The attendance for this public hearing was as follows:

Appellant – Malta Recycle & Waste Collection Limited.

Dr Lennox Vella – Legal Representative.

Mr Twanny Barun – Company Representative.

Contracting Authority – Hal-Balzan Local Council.

Dr Christopher L. Vella – Legal Representative

Dr Angelo Micallef – Chairperson

Ms Doriette Farrugia – Secretary

Mr Mark Debono – Evaluator

Mr Chris Falzon – Evaluator

Preferred Bidder – Saviour Mifsud (Sole Trader)

Officially declined the invitation

Interested Party – Simply Clean Limited.

Mr Melchior Dimech – Company Representative

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2222 in the records of the PCRB. The Chairman identified the Appellant as Malta Recycle & Waste Collection Limited, the Contracting Authority as Hal-Balzan Local Council, and acknowledged the presence of representatives of the Interested Party, Simply Clean Limited. The representatives of the preferred bidder, Saviour Mifsud (Sole Trader), officially declined the invitation to attend.

The Chairman invited the parties to state their names and surnames for the record and thereafter invited the legal representative for the Appellant to make the initial submissions.

Initial Submissions

Initial Submissions by Dr Lennox Vella (for the Appellant)

Dr Vella stated that he did not have much to add beyond the documentation already submitted to the Board. He explained that the matter concerned the rejection of his client's bid based on an allegation that the company representative had made contact with a member of the evaluation board by the name of Ryan Mercieca. In this connection, he noted that a police report had been filed in Gozo, the reference number of which was listed in the appeal documentation. He observed that the copy of the police report presented by the Appellant was substantially redacted, as it contained no substantive information, owing to the nature of the matter.

Dr Vella further noted that the person referred to as Ryan had, in any event, acted swiftly and subsequently made a declaration that he would not proceed against his client in respect of that report. Nonetheless, an

allegation remained on record to the effect that the client may have been in contact with, or was prohibited from contacting, an individual during the evaluation process.

Dr Vella was emphatic that his client had at no point spoken to Ryan Mercieca in relation to any specific tender. He stated that any contact between the two individuals had related exclusively to the misuse of company vehicles in Gozo that were being used in connection with other tenders submitted on the island. He indicated that his client was in a position to testify on this matter and that he had no objection to calling him as a witness.

Initial Submissions by Dr Christopher L. Vella (for the Contracting Authority).

Dr Christopher Vella identified himself as the legal representative of the Contracting Authority, Hal-Balzan Local Council. He stated that this was a tender issued by the Local Council for the collection of bulky refuse. He submitted that the objection and the defence of the Contracting Authority did not concern a technical point but rather a matter of ethics, as provided for in the general rules governing tenders and in the law itself.

Dr Christopher Vella explained that, as set out in the Contracting Authority's response submitted during the deliberations of the evaluation committee, one of the members of the evaluation committee, Mr Ryan Mercieca, received a phone call from the director, shareholder, company secretary, and legal representative of Malta Recycle & Waste Collection Limited, the Appellant in the present case. He submitted that the content of the call, as evidenced in the report presented, was manifestly threatening in nature, aimed at pressuring the committee to decide in favour of the Appellant.

Upon receiving the call, Mr Mercieca reported the matter to the evaluation committee, to his fellow members, and subsequently filed a formal police report. Dr Christopher Vella noted that, under the general rules governing tenders and the Public Procurement Regulations, any person or company that attempts to influence or interferes with the evaluation process is liable to blacklisting. The member in question had filed a police report in respect of this matter.

With regard to the settlement agreement that had been presented, Dr Christopher Vella stated that that agreement was concluded between Mr Barun and Mr Mercieca exclusively for the purposes of criminal proceedings, in order that Mr Mercieca would not continue to pursue criminal proceedings against Mr Barun. He emphasised that the agreement was not intended to retract the allegation made. He indicated that he had a great deal more to say and would reserve his full submissions for the final submissions stage.

Dr Christopher Vella further drew the Board's attention to the fact that, at 5:30 that morning, he had received an email from Mr Mercieca advising that he was unable to attend the hearing due to illness. He submitted that Mr Mercieca was a crucial witness for the Contracting Authority and requested that the Board direct the parties on how to proceed, suggesting that Mr Mercieca might testify at a further sitting or by means of an affidavit. He added that he had enquired whether Mr Mercieca could testify online but had not yet received a reply.

The Chairman addressed this request and noted that, for the record, he would require a copy of Mr Mercieca's medical certificate. He proposed working in parallel, commencing with the appellant's evidence while simultaneously attempting to contact Mr Mercieca to ascertain whether he could testify online. The Chairman indicated that he was willing to provide Mr Mercieca with an online access link and assumed that there was no objection from the Appellant to testimony being given in that manner.

Dr Lennox Vella confirmed that he had no objection to online testimony, provided it took place immediately, adding that he had no wish to cause unnecessary delay to the Board or to the parties' commitments. He noted, parenthetically, that it was very convenient that the notice of illness was received at 5:30 in the morning.

Witness Testimony

Statement by Dr Lennox Vella for the Appellant.

Dr Lennox Vella confirmed that he would rely on the documentation already submitted and that he did not intend to call any witnesses.

Ms Marie Claire Tabone (ID: 71576M) – Summoned by Dr Christopher L. Vella

Ms Tabone was called as a witness by the Contracting Authority. She took the oath and confirmed that she would tell the truth, the whole truth, and nothing but the truth.

In examination-in-chief, Ms Tabone confirmed the following. First, mobile telephone number 99044394 is registered with EPIC Communications Limited in the name of Malta Recycle & Waste Collection Limited, company registration number C97801, with an address at Barriera Barun, Triq il-Ħarruba, Siggiewi, Malta. The number has been active since 14 June 2021.

Second, mobile telephone number 79256904 is also registered with EPIC Communications Limited, in the name of Ryan Mercieca, ID Card Number 053998M, Flat 5, Block B, Triq taċ-Ċawla, Victoria, Rabat, Gozo. The number has been registered with EPIC since 20 December 2021.

Third, Ms Tabone confirmed that she had checked the call records for number 79256904 in relation to incoming calls from number 99044394 on Wednesday, 8 October 2025. Her records showed one successful call and three call attempts. The successful call was made at 15:11 and lasted 64 seconds. Ms Tabone presented documentary evidence in support of her testimony, which was admitted and marked as Exhibit CT001. No questions were put to her in cross-examination by the Appellant.

Dr Angelo Micallef (ID: 0125286M) – Chairperson of the Evaluation Committee – Summoned by Dr Christopher L. Vella

Dr Angelo Micallef was called as a witness by the Contracting Authority. He took the oath and confirmed that he would tell the truth, the whole truth, and nothing but the truth.

In examination-in-chief, Dr Micallef confirmed that his role within the evaluation committee for tender BLC04/2025 was that of Chairperson. He testified that Mr Ryan Mercieca had informed the evaluation committee that he had received a threatening phone call from one of the bidders in connection with the evaluation process. Following receipt of this report, the committee sought legal advice on how to respond to the situation of having one of its evaluators report the receipt of a threatening call from a bidder. The committee acted in accordance with the legal advice it received.

Dr Micallef further confirmed that, pursuant to the legal advice given, the regulations provide that when there is an approach by one of the bidders, this constitutes grounds for disqualification. Accordingly, the committee proceeded in line with that legal advice. Mr Mercieca filed a police report in connection with the matter. The committee relied entirely on the police report and on the legal advice it had been given.

Cross-examination by Dr Lennox Vella

In cross-examination, Dr Lennox Vella put a single question to the witness: whether the committee had heard one side or two. Dr Micallef answered that the committee had relied on the police report. No further questions were put to the witness.

Mr Ryan Cefai Mercieca – Evaluator (Waived).

Following a recess during which efforts were made to contact Mr Ryan Cefai Mercieca by telephone without success and noting that the hearing for a second connected appeal on the same tender was scheduled to begin at 10:30, Dr Christopher Vella formally waived the testimony of Mr Mercieca in order not to cause further delay to the proceedings. The Chairman noted this waiver for the record.

Witness: Mr Twanny Barun (ID: 573083M) – Director, Malta Recycle & Waste Collection Limited - Summoned by Dr Christopher L. Vella

Mr Twanny Barun was called as a witness by the Contracting Authority. He took the oath and confirmed that he would tell the truth, the whole truth, and nothing but the truth.

In examination-in-chief, Mr Barun confirmed that he is the director of Malta Recycle & Waste Collection Limited. With regard to the phone call, he acknowledged that he had personally called Mr Ryan Mercieca. He explained that he also operates waste collection and cleaning work in Gozo. A colleague had contacted him and informed him of a problem – specifically, that someone had submitted a tender in Xagħra Local Council in Gozo using the vehicles registered to Mr Barun’s company, which are Euro 5 and Euro 6 compliant. According to Mr Barun, Ryan Mercieca had admitted that those vehicles were not his but belonged to Malta Recycle & Waste Collection Limited. Mr Barun stated that his purpose in calling Mr Mercieca was solely to tell him to stop submitting tenders in Gozo using his company’s vehicles.

Mr Barun was adamant that he had not spoken to Mr Mercieca about the Hal-Balzan tender at any point during the call. He stated that he had also acted in his capacity as a contracts manager for other local councils. He denied ever having threatened Mr Mercieca. Following the initial call, Mr Mercieca called him back and told him to retain a lawyer. Mr Mercieca subsequently called again, asking him to attend the offices of Mr Mercieca’s lawyer in Birkirkara. Mr Barun contacted his own company lawyer, who advised him to obtain and review the document before signing it. The document in question was the settlement agreement subsequently presented in the proceedings.

With regard to the police report filed against him, Mr Barun confirmed that he had not provided his version of events to the police. He explained that he had spoken to an inspector who told him that, given the existence of the settlement agreement, he did not need to file a counter-report.

Mr Barun was taken to the settlement agreement, which bore the date of 9 December – approximately two months after the police report. He was asked to reconcile this with his earlier statement that he had signed it within approximately four days. Mr Barun acknowledged that he could not recall the exact date and had been mistaken.

Final Submissions.

Final Submissions by Dr Lennox Vella (for the Appellant)

Dr Vella submitted that Ryan Mercieca appeared to have been involved in various dealings and arrangements, having submitted tenders in Gozo using the vehicle registration numbers of his client’s company, given that those vehicles are registered and compliant with legal requirements. He submitted that Mr Mercieca had sought to make a police report and had approached the evaluation committee Chairman to allege that there had been some form of contact. In doing so, the Chairman had heard only one side and proceeded accordingly. Thereafter, Mr Mercieca went freely, having achieved his purpose, and executed the settlement agreement to withdraw the report. There were no further consequences for his client, who was not summoned again.

Dr Vella questioned why Mr Mercieca, who he described as the principal witness as to whether the alleged contact occurred and what was said, had not appeared before the Board. He invited the Board to draw its own conclusions as to why Mr Mercieca had conveniently reported being unwell on the morning of the hearing. He submitted that the wrong committed in this case was clear and evident from the facts. He further submitted that his client's tender had been considerably lower in price than that which was ultimately awarded, and that the reasons for the report being made remained unknown, given that the Chairman of the evaluation committee had not investigated the matter further but had proceeded on the basis of one account alone, in breach of fundamental principles of natural justice.

Dr Vella accordingly requested that the appeal be accepted in its entirety and that his client be awarded what was rightfully his.

Final Submissions by Dr Christopher L. Vella (for the Contracting Authority).

Dr Christopher Vella addressed the argument that the Chairman of the evaluation committee had heard only one side. He submitted that the evaluation committee is expressly prohibited from making informal contact with tenderers outside the formal evaluation process. To suggest that the Chairman should make contact with a tenderer or that a tenderer should approach a member of the evaluation committee would be contrary to the principles governing the process, including the principle of non-discrimination.

With regard to the grounds of appeal, he submitted that it appeared to be inferred in the appeal that, because the Appellant's was the cheapest offer, the committee should not have looked any further. He emphasised that the fundamental principle applicable to such tenders is that the contract is awarded to the cheapest compliant offer, meaning that a tenderer must be compliant not only technically and administratively, but also from the standpoint of ethical conduct. He referred to Rules 14.2 and 21.1 of the General Rules Governing Tenders as being clear on this point.

Dr Christopher Vella submitted that, notwithstanding the absence of Mr Mercieca's testimony, the Board had sufficient evidence before it. He noted that there was a clear police report, filed by Mr Mercieca on the very day he received the call and not two days later. There was an EPIC representative who had confirmed that a call had been made. Mr Barun had confirmed that he was aware that Mr Mercieca was a contracts manager, and a call had been made to him on 8 October while the evaluation process was ongoing. Mr Mercieca had filed the police report and it clearly stated what had occurred.

He further submitted that Mr Barun had failed to provide his version of events to the police, notwithstanding that two months had elapsed since he signed the settlement agreement. The police report presented by the opposing party confirmed that no version had been given to the police. He further noted that it would have been straightforward for Mr Barun to produce documentary evidence — such as vehicle logbooks — to substantiate his claim that the call concerned vehicle misuse in Gozo, yet not a single piece of documentary evidence was produced, leaving his account entirely unsubstantiated. He submitted that there was therefore sufficient evidence for the Board to find that some form of interference had taken place on the part of Mr Barun in connection with the evaluation process.

He also addressed the argument that, because the Appellant is a company, the conduct of its director should not be attributed to it. He rejected this argument, noting that the company is, in effect, a one-man operation, with Mr Barun holding every role within it. This was confirmed by Mr Barun himself and corroborated by an extract from the Malta Business Registry presented in the proceedings. It had also been confirmed by the EPIC representative that the call was made from a telephone registered to the company itself.

Dr Christopher Vella submitted that this Board's role was administrative and not criminal, and that the standard of proof applicable in an administrative context differs from that applicable in criminal proceedings. The Board was not required to determine criminal guilt or innocence. Its role was to determine whether, in view of the information before the evaluation committee on 10 October 2025, the committee was correct in its decision. He submitted that the evaluation committee had had no other choice but to act as it did and to disqualify Malta Recycle & Waste Collection Limited from the tender.

Replica by Dr Lennox Vella (for the Appellant)

Dr Vella stated that he could not but emphasise the importance of the principle of hearing both sides – audi alteram partem – a principle of natural justice, which is fundamental and inviolable, and which exists precisely to prevent decisions being taken on the basis of one account alone. He reiterated that the Chairman of the evaluation committee had heard only one side and had acted upon it, contrary to this basic legal principle.

He further submitted that, to be clear, his client was not proposing to collect waste by unconventional means; Mr Barun had all the vehicles necessary to fulfil the requirements of this tender. The opposing side had based its entire case on the phone call. However, the person who purportedly received the call had not seen fit to attend. He noted that the call was made from a company phone, but the contents of that call remained unknown, given that the person who received it had not appeared before the Board. He submitted that it was clear where the wrongdoing lay in this matter and indicated that he would conclude at that point.

Conclusion of the Hearing

The Chairman thanked all parties present and formally concluded the hearing. The Board would communicate its decision in due course.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 3rd March 2026.

Having noted the objection filed by Malta Recycle & Waste Collection Limited (hereinafter referred to as the Appellant) on 11th December 2025, refers to the claims made by the same Appellant with regards to the tender of reference BLC04/2025 listed as case No. 2222 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Lennox Vella

Appearing for the Contracting Authority: Dr Christopher L. Vella

Whereby, the Appellant contends that:

- a) The sole criterion for award is the price.
- b) Once the appellant company submitted the cheapest price it should have been awarded the tender
- c) The reason for rejection is being stated as a violation of regulation 14.2 of the General Rules Governing Tenders. A reference to a police report was also made.
- d) It must be stated that the appellant company has a separate judicial personality and is separate from the individual.
- e) Even though a report was submitted, one is still presumed innocent until found guilty.
- f) Finally, it must be stated that the report was filed to cause harm and the report is to be rescinded.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 19th December 2025 and its verbal submission during the hearing held on 3rd March 2026, in that:

- a) ***The offer submitted by the Appellant was the cheapest offer and therefore the Tender should have been awarded to the Appellant;***

The Appellant's expectation to be awarded with the tender merely on the basis that his offer was the cheapest offer is in breach of the tender document. The principle is that the offer is awarded to the cheapest compliant offer. Thus primarily the offer is to pass the administrative and technical criteria test. Only once such tests are successfully passed can the offer proceed to the financial evaluation.

In this particular case the offer could not be considered further for financial evaluation. Such situation arose after one of the evaluators, throughout the evaluation process, filed a police report claiming that he received threats from Twanny Barun in relation to the tender. A copy of the Police Report is being attached and marked as Doc. B. As will become evident throughout the sitting, the caller was identifiable as being Twanny Barun who is the sole shareholder, sole director, sole judicial and legal representative and the company

secretary of Malta Recycle & Waste Collection Limited (the Appellant) (evidence for this in Doc. C). On the basis of this, after having considered the nature of the threats made, the clear identification by one of the evaluators of the director of the Appellant and the severity of the threats made against one of the evaluators, the Evaluation Committee has proceeded to disqualify the tender offer made by the Appellant. Such a decision was not taken lightly but after due consideration of all these elements and the General Rules Governing Tenders.

To this end, reference is made to article 14.2 of the General Rules Governing Tenders which state:

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

Reference is also made to clause 21.1 of the General Rules Governing Tenders (Ethics Clause) which states:

21.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the outcome of the procurement procedure during the process of examining, clarifying, evaluating, comparing and the recommendation leading to the award or cancellation of tenders will result in the rejection of his/ her candidacy or tender and may result in administrative penalties. (emphasis added)

Such a circumstance is so severe that the legislator included this as one of the grounds for blacklisting by means of article 199 of the Public Procurement Regulations:

(f) the economic operator has undertaken to unduly influence the decision-making process of the contracting authority, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, award or selection;

From a review of the report it is undeniably clear that the threats were aimed at influencing the decision and the decision making process and thus the natural effect of such threats was the disqualification and rejection of the offer made. Thus irrespective of the fact that the offer was the cheapest offer, the circumstances led to grounds for disqualification of the Appellant's offer.

b) ***The Appellant is a company which enjoys a separate and distinct legal personality;***

In its second ground of appeal the Appellant claims that the company has a separate and distinct juridical personality. Although the Appellant fails to delve further into this statement, the inferral which the Appellant is attempting to make is that the Company should not suffer any consequences for actions done by its directors.

It should firstly be noted that should this theory be the binding principle, then article 14.2 and 21.1 of the General Rules Governing Tenders would not apply to any company and would only apply to physical persons making an offer. This would thus put companies in favour and give a clear advantage to companies over physical persons to use all such efforts within their power to influence the decision makers since a

company can never itself threaten or influence the decision making process. It can only do so through its directors. However a company acts through its directors and the action and intent of a director, particularly in the context of public procurement, are attributed to the company itself. In fact this is a principle which is embraced in common law known as the 'Directing Mind Doctrine' whereby a company is guilty if the crime's guilty intent belongs to its senior leadership. It is undoubtedly evident that Twanny Barun, being the sole director, is considered as part of the senior leadership. Moreover, it is important to emphasise that this Honorable Board does not operate in the realm of Criminal Law but rather operates in the realm of Administrative Law. Thus the effect of the decision of the Evaluation Committee was not to lead to any criminal punishment. However the decision of its director is a clear reflection of the professional suitability and standing of the company itself.

c) ***The accused is innocent until proven guilty;***

In its third ground of appeal the Appellant contends that an accused is innocent until proven guilty and that the fact that a police report is filed is not necessarily a reflection of the truth. Whilst the Appellant is correct in these two principles, it is evident that the Appellant is again applying principles found in the realm of the Criminal Law sphere to an area of the law which is distinct. The remit of this Honorable Board is not to decide whether Twanny Barun committed a crime in influencing one of the evaluators but whether the Evaluation Committee was correct in its decision to disqualify the Appellant's offer on the basis of the threats and the undue influence made.

Moreover, this Honorable Board is not expected to have a burden of proof beyond reasonable doubt but on the contrary it is expected to have evidence on the basis of probability. Thus the Appellant's expectation to apply criminal law principles and burden of proof beyond reasonable doubt for the Public Contracts Review Board is being challenged and out-rightly contested.

d) ***The Police report filed was intended to harm and a declaration was made by the person filing the report***

It is up to the appellant to bring sufficient evidence manifesting that the report was filed with the intention to harm. Thus the burden of proof shifts on the Appellant to bring such evidence, which declaration is being challenged and contested in its entirety. With reference to the declaration. made (Dok. C), which is not sworn on oath, it is evident that such declaration was made with reference to any criminal proceedings and thus its effects are that the evaluator is confirming that he will not pursue with criminal proceedings. However it does not state that the threats were not made and neither does it confirm that the report made was false. Thus the declaration filed as 'Dok. C' has no impact on these proceedings or on the validity of the Police Report or threats made by the Appellant's sole director, shareholder and company secretary.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances.

Preliminary Note: Relationship with Case 2223

This case and Case 2223 (Simply Clean Limited vs Hal Balzan Local Council) concern the same tender, BLC04/2025, and were heard together by this Board. It was in these proceedings, principally through the testimony of Ms Marie Claire Tabone, Dr Angelo Micallef and Mr Twanny Barun, that the relationship between Mr Ryan Cefai Mercieca, the Evaluator whose report led to the Appellant's disqualification, and Mr Barun, director of the Appellant, first came before this Board. Simply Clean Limited, the Interested Party here, relied on that evidence to raise a fifth grievance in Case 2223, contending that Mr Cefai Mercieca could not properly form part of the Evaluation Committee for this tender by reason of an undisclosed conflict of interest with Mr Barun and with the Appellant. In its decision in Case 2223, the Board upheld that grievance and found the Evaluation Committee irregularly constituted and its evaluation vitiated. Those reasons are set out in full in Case 2223 and are not repeated here.

Why the Appellant's Grievances Cannot Be Decided at This Stage

This appeal and Case 2223 both concern tender BLC04/2025. The appellant's grievances cannot be decided at this stage for the following reasons.

Given the finding in Case 2223 that the Evaluation Committee was irregularly constituted, the evaluation of tender BLC04/2025, including the Appellant's own offer, must in any event now be conducted afresh by a newly constituted Evaluation Committee. In *Simply Clean Limited vs Dipartiment tal-Kuntratti, Kummissarju tal-Pulizija u AGV HR Management Ltd* (Rikors numru 34/2026/1, 30th April 2026), the Court of Appeal held that, once an evaluation is found tainted by a conflict of interest requiring a fresh evaluation by a newly constituted committee, the Board should not enter into whether the original committee decided rightly or wrongly on the other matters raised, since it is for the new committee to consider the offers afresh, and it makes no sense to influence that committee before it has begun its work. Applying that guidance, the Board should not pre-empt the fresh evaluation by ruling on the merits of the Appellant's pleaded grounds; that evaluation will determine, independently, whether the Appellant's offer is compliant and how it ranks.

Given that the evaluation of this tender must begin again before a differently constituted Evaluation Committee, the Board determines that the Appellant's grievances are premature and cannot be definitively adjudicated at this juncture. Those grievances are left undecided and unprejudiced (*impregudikati*), in accordance with *Simply Clean Limited vs Dipartiment tal-Kuntratti et* (Rikors numru 34/2026/1, 30th April 2026), and the Appellant's rights in respect of them are fully reserved.

The Board,

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

- a) Finds, for the reasons given in Case 2223, that the Evaluation Committee for tender BLC04/2025 was irregularly constituted, and that the Appellant's disqualification, resting on the report of the member concerned, is vitiated;
- b) Determines that the Appellant's grievances are premature and cannot be adjudicated at this stage, and leaves them undecided and unprejudiced (impregudikati), in accordance with Simply Clean Limited vs Dipartiment tal-Kuntratti et (Rikors numru 34/2026/1, 30th April 2026);
- c) Revokes the decision to disqualify and reject the Appellant's offer under tender BLC04/2025;
- d) Includes the Appellant's offer in the re-evaluation of tender BLC04/2025 already ordered in Case 2223, to be conducted by the newly constituted Evaluation Committee;
- e) Directs that the Appellant's bid validity be extended if required, and that the Contracting Authority take any further measures necessary to give effect to this decision;
- f) Directs that the deposit of €400 paid by the Appellant be fully reimbursed.

Mr Kenneth Swain
Chairman

Dr Vincent Micallef
Member

Dr Ing. Damien Gatt
Member