

PUBLIC CONTRACTS REVIEW BOARD

Case 2223 – 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 Adrian Delia on behalf of Simply Clean Limited, (hereinafter referred to as the appellant) filed on the 12th 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 22nd December 2025;

Having heard and evaluated the testimony of the witness Ms Doriette Farrugia (ID No. 310387M), Secretary of the Evaluation Committee, as summoned by Dr Adrian Delia for and on behalf of the Appellant during the first Hearing, 3rd March 2026;

Having heard and evaluated the testimony of the witness Mr Mark Debono (ID No. 199675M), Evaluator, as summoned by Dr Adrian Delia for and on behalf of the Appellant during the first Hearing, 3rd March 2026;

Having also noted the Note and Additional Grievance filed by Dr Adrian Delia on behalf of the Appellant on the 13th March 2026, raising a fifth grievance concerning the alleged irregular composition of the Evaluation Committee;

Having also noted the Contracting Authority's Reasoned Letter of Reply to the said Note and Additional Grievance, filed by Dr Christopher L. Vella on the 23rd March 2026;

Having heard and evaluated the testimony of the witness Mr Ryan Cefai Mercieca (ID No. 53998M), Evaluator, as summoned by Dr Adrian Delia for and on behalf of the Appellant during the second Hearing, 14th April 2026;

Having heard and evaluated the testimony of the witness Ms Doriette Farrugia (ID No. 310387M), Secretary of the Evaluation Committee, as summoned by Dr Adrian Delia for and on behalf of the Appellant during the second Hearing, 14th April 2026;

Having also noted the decision of this Board taken during the second Hearing of the 14th April 2026, acceding to the Appellant's plea and directing that representatives of WasteServ Malta Ltd and of the Environment and Resources Authority be summoned to give evidence at a subsequent sitting;

Having heard and evaluated the testimony of the witness Mr Daniel Tabone (ID No. 203197M), WasteServ Malta Ltd Representative, as summoned by Dr Adrian Delia for and on behalf of the Appellant during the third Hearing, 1st September 2026;

Having heard and evaluated the testimony of the witness Ms Pauline Camilleri (ID No. 217785M), Senior Environment Protection Officer, Environment and Resources Authority, as summoned by Dr Lennox Vella for and on behalf of the Interested Party during the third Hearing, 1st September 2026;

Having heard and evaluated the testimony of the witness Dr Angelo Micallef (ID No. 125286M), Mayor and Chairperson of the Tender Evaluation Committee, as summoned by Dr Adrian Delia for and on behalf of the Appellant during the third Hearing, 1st September 2026;

Having heard and evaluated the testimony of the witness Ms Sefora Debono (ID No. 527990M), Department for Industrial and Employment Relations (DIER), as summoned by Dr Adrian Delia for and on behalf of the Appellant during the third Hearing, 1st September 2026;

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 1st Board sitting of the 3rd March 2026 hereunder reproduced.

Having noted and evaluated the minutes of the 2nd Board sitting of the 14th April 2026 hereunder reproduced.

Having noted and evaluated the minutes of the 3rd Board sitting of the 1st September 2026 hereunder reproduced.

Meeting Minutes for the 1st Board sitting on the 3rd of March 2026

Case 2223 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 August 2025 and the closing date was the 26th September 2025.

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

A deposit of €400 was paid.

There were six bids.

On the 12th December 2025, Simply Clean Limited lodged an appeal against Hal Balzan Local Council – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 3rd 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.

The attendance for this public hearing was as follows:

Appellant – Simply Clean Limited

Dr Adrian Delia – Legal Representative

Mr Melchior Dimech – 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 – Malta Recycle & Waste Collection Limited

Mr Twanny Barun – Company Representative

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2223 in the records of the PCRB. The Chairman identified the Appellant as Simply Clean Limited and the Contracting Authority as Hal Balzan Local Council and acknowledged the presence of the representative of the Interested Party, Malta Recycle & Waste Collection Limited. The Preferred Bidder, Saviour Mifsud (Sole Trader), officially declined the invitation to attend.

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

The Chairman stated that Mr Twanny Barun was present for the Interested Party and that the Preferred Bidder had declined the invitation to attend the hearing.

Following the hearing of Case Number 2222 (Malta Recycle & Waste Collection Limited vs Hal Balzan Local Council, concerning the same tender, BLC04/2025) Dr Delia requested to introduce a new grievance relating to ‘conflict of interest’ and he verbalised:

“Fid-dawl ta cirkostanzi godda u li ma kienux mgharufa, lil appellant u senjatament jolqtu mill qrib il-korrettezza, t-trasparenza, il-livell ‘playing field’ u ‘jew bil- maqlub, abbuz li setgha sar jew jidher li jista jsir, senjatament illi persuna li kienet tpoggi fuq l-evaluation Bord ghandha konflitt ta ‘nteress jitlob li jitressaq aggravju ulterjuri ma l-erbgha li diga tressqu”.

Dr Christopher Vella, for the Balzan Local Council, stated that there was no proof of conflict of interest and no evidence that any member had an undeclared interest in the previous procedures. He invited the Appellant to submit such proof.

The Chairman stated that the names of the members of the Evaluation Committee were known during the first session.

Dr Delia remarked that the Appellant had previously requested the names, and that they would not be adding a new grievance if this plea were granted.

The Chairman insisted that the names of the members are always provided during the first session; however, he upheld the request made by Dr Delia.

Initial Submissions

Initial Submissions by Dr Adrian Delia (for the Appellant)

Dr Delia stated that the first grievance concerned the failure to provide the requested information. The Council had quoted a judgment of the Court of Appeal regarding ‘South Lease’. It was clear that no ‘commercially sensitive information’ had been requested. The Appellant requested, and he quoted:

“The number of Evaluation Committee members. The names of the Evaluators. Clarification as to the requirement under Article 5 of the tender document relating to the possession of a temporary Employment Agency or Employment Agency Licence”.

This was basic information; however, they were told that this was a fishing expedition. This person was on the published list.

Dr Delia asked whether the Recommended Bidder relied on the capacity of a third party. Referring to the third grievance concerning 'Potential other irregularities, Omissions and Inconsistencies' and quoting the Council's reply:

"The Third Grievance is also based on the premise that certain information was not provided and is in essence a reservation, by the Appellant, to raise further grievances".

Dr Delia stated that they had every right to ask, since they were not given the structured information requested, and he quoted:

"Whether all bidders, including the Recommended Bidder, were compliant with this requirement and whether any verification or documentary checks were carried out in this regard.

Information on whether any bidder relied on the capacity of third parties or declared any form of subcontracting as part of their offer, including the proportion and nature of any subcontracted services".

This is defined by law. The Council stated that the Appellant's bid was fully compliant but not the cheapest. However, if the Recommended Bidder was not fully compliant, the Appellant should be considered. The fourth grievance formed part of the other three grievances.

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

Dr Vella stated that Simply Clean Limited was one of six bidders. Their financial bid was almost €75,000, while the bid of the Recommended Bidder was almost €23,000. The Appellant's bid was administratively and technically compliant and was the most expensive of all the bids.

Dr Vella stated that this appeal did not concern something that occurred during the process. Rather, an email was sent by the Appellant after the process and the award, requesting information. The Evaluation Committee replied that it could not provide information relating to other bidders and could only provide information concerning the same applicant. Referring to Article 40, he stated that confidential information should not be disclosed:

"Shall not disclose information forwarded to it by the economic operator, which they have designated as confidential, including but not limited, to technical or trade secrets, and the confidential aspects of tenders".

Dr Vella noted that the information requested was not included in the list of information that may be provided under Article 40. Article 242 of the PPR also sets out the information which the Evaluation Committee is obliged to provide; however, the information requested by the Appellant did not fall within those parameters.

It is not a trivial matter for the Committee to disclose information as part of the process, even after its conclusion. This approach should not be given an excessively broad interpretation. The Evaluation Committee is bound to safeguard the information provided by other bidders and to adhere strictly to the law. This is not a question of practicability.

The tender required a self-declaration that, prior to contract signing, the recommended awardee would be in possession of the relevant licence. He quoted from Page 5, Clause 5:

“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”.

The Court has repeatedly stated:

“fejn ikun hemm dak it-tip ta talba, inti ma tistax tippretendi, li mbghad, jkunu tawk il-licenzja, imma tippretendi li jtuk is-self declaration”.

Witness Testimonies

Testimony of Ms Doriette Farrugia (ID No. 310387M) (Secretary of the Evaluation Committee) — Summoned by Dr Adrian Delia

Ms Farrugia, Secretary of the Evaluation Committee, stated that the bids were submitted through the ePPS system. She did not know whether Mr Saviour Mifsud, one of the bidders, was retired.

Dr Delia stated that this was relevant because it would not be possible to obtain a licence if he were retired.

She added that nothing in the bid was marked as confidential.

Cross-examination by Dr Christopher L. Vella

Ms Farrugia confirmed that an email was sent by the Appellant on the 9th December 2025 and that a reply was sent on the 10th December 2025.

Dr Vella asked how she responded to the question.

Ms Farrugia stated that before replying to the email, she sought guidance from the Procurement Unit of the Local Government Division, which informed her that she could not disclose information concerning other bidders.

Dr Vincent Micallef asked whether she had the declarations of conflict of interest of the members of the Evaluation Committee.

The witness replied that these declarations were in the system and that none of the members had a conflict of interest.

Testimony of Mr Mark Debono (ID No. 199675M) (Evaluator) — Summoned by Dr Adrian Delia

Mr Debono, a member of the Evaluation Committee and a Financial Director at the University, was appointed by the Council. He stated that Mr Saviour Mifsud submitted all the documents required by the tender and declared that he possessed the licence. Dr Delia requested a verbatim reading. Mr Debono read:

“I, the undersigned, Saviour Mifsud in my capacity as sole trader, hereby solemnly declare the following on my behalf:

We confirm that we have read and understood the requirement stipulated in Article 5A in Section 1 – Instructions to Tenderers.

We hereby declare and formally commit that should our tender be selected and I am nominated as the Recommended Awardee, I shall ensure that, prior to the final signing of the contract, I will be in

possession of either a Valid or Conditional Licence to operate as an Employment Agency or Employment Business.

This licence will be issued in full accordance with the Employment Agencies Regulations (S.L. 452.130) of the Laws of Malta.

I Understand that failure to provide proof of such a licence before the contract signing may result in the withdrawal of the award and may lead to other penalties as specified in the tender.

This declaration is made in good faith and the information provided is true and accurate”.

Mr Debono stated that there was a process to obtain this licence and that the declaration clearly provided that, if the licence were not obtained, the contract would not be awarded. The Council would then proceed to the second bidder.

Dr Delia asked whether he had prior experience.

Dr Vella intervened, stating that the Committee is appointed specifically for a tender and would not necessarily have such information.

Mr Debono confirmed that the requested submission had been provided. He also confirmed that Simply Clean submitted the licence.

Cross-examination by Dr Christopher L. Vella

Mr Debono stated that the Committee adjudicates by taking into consideration the regulations of the PPR and the requirements set out in the tender document. The requirement concerned the licence, whether already in possession or to be obtained prior to contract signing.

Case Management: Procedural Dates

Dr Delia had closed his evidence regarding the other grievances but wished to submit related evidence concerning the new grievance.

After a brief discussion, the Chairman suggested, and all parties agreed, that the Appellant would have until Friday 13th March 2026 to produce proof in relation to the new grievance, and that the Contracting Authority would have until Monday 23rd March 2026 to reply. The next session would be held on Tuesday 14th April 2026.

The Chairman informed the parties that the Secretary might not be present at the next hearing and that, if necessary, a member of staff would substitute for her. There were no objections.

Finally, the Chairman stated that the first appeal was officially closed, but asked all parties, including Mr Twanny Barun, whether they agreed that the six-week period for the decision would commence on Tuesday 14th April 2026. There were no objections.

Conclusion of the Hearing

With no further arguments presented, the Chairman, Mr Kenneth Swain, thanked the parties and adjourned the hearing to Tuesday 14th April 2026 at 10:30 a.m.

End of Minutes for the 1st Board Sitting

Meeting Minutes for the 2nd Board sitting on the 14th of April 2026

On the 14th April 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Dr Vincent Micallef as members, reconvened following the first public hearing held on the 3rd March 2026.

The attendance for this public hearing was as follows:

Appellant – Simply Clean Limited

Dr Adrian Delia – Legal Representative

Mr Melchior Dimech – Company Representative

Contracting Authority – Hal Balzan Local Council

Dr Christopher L. Vella – Legal Representative

Ms Doriette Farrugia – Secretary

Mr Mark Debono – Evaluator

Mr Chris Falzon – Evaluator

Witness

Mr Ryan Cefai Mercieca – Evaluator

Preferred Bidder – Saviour Mifsud (Sole Trader)

Officially declined the invitation.

Interested Party – Malta Recycle & Waste Collection Limited

Mr Twanny Barun – Company Representative

Opening Statements

The Chairman, Mr Kenneth Swain, welcomed the parties and declared the 2nd session of Case 2223 of the PCRB open. He informed those present that one of the members of the Board would be following the sitting online. There were no objections.

He invited Mr Ryan Cefai Mercieca (ID No. 53998M), one of the evaluators forming part of the Evaluation Committee, who had been summoned by Dr Adrian Delia, to take the stand.

Witness Testimonies

Testimony of Mr Ryan Cefai Mercieca (ID No. 53998M) (Evaluator) — Summoned by Dr Adrian Delia

Dr Delia asked Mr Cefai Mercieca to explain his involvement in the Tender, how this started and where.

Mr Cefai Mercieca answered that he had been asked by the Council Secretary, at some point between September and October 2025, to form part of the Evaluation Committee for this particular tender. He continued that he was not an employee of the Council but had been awarded a tender as Contracts Manager of the Hal Balzan Local Council.

At this stage Dr Delia asked whether Mr Cefai Mercieca's appointment as a member of the Evaluation Committee in October 2025 was separate from his duties as Contracts Manager or formed part of those duties.

Mr Cefai Mercieca answered that he did not think that being Contracts Manager had anything to do with his presence as a member of the Evaluation Committee.

Dr Delia asked whether Mr Cefai Mercieca had been Contracts Manager before 2025, and whether his duties as Contracts Manager also included forming part of evaluation committees or whether these were separate.

Mr Cefai Mercieca answered that he had been Contracts Manager before 2025, and that he did not know whether membership of evaluation committees was included in the terms of reference of the tender for the post of Contracts Manager.

Dr Delia asked whether, while serving as Contracts Manager, Mr Cefai Mercieca was also involved with other companies providing services to the Hal Balzan Local Council.

Mr Cefai Mercieca explained that his own tender as Contracts Manager included a list of tenders in respect of which he had to ensure that the preferred bidders abided by their commitments.

Dr Delia asked whether the witness knew a certain Mr Twanny Barun.

In answer to further questions by Dr Delia, Mr Cefai Mercieca stated that he knew a person named Twanny Barun of Malta Recycle & Waste Collection Limited, who had been the contractor under a tender involving bulky refuse before he himself became the Council's Contracts Manager. His duty as Contracts Manager was to check that Mr Barun was honouring his commitments, which involved the collection of bulky refuse. He also confirmed that that service is the subject of the present tender.

Mr Cefai Mercieca answered that Mr Barun had acquired the tender before his own appointment as Contracts Manager, and that he became Contracts Manager at the time when Mr Barun's tender was about to expire. He continued that the Council issued another tender, for which various contractors including Malta Recycle applied, and explained that after the bids were opened the Council set up an Evaluation Committee to choose the next contractor.

At this stage Dr Delia asked who is providing this service today.

Mr Cefai Mercieca answered that the service was still being provided, but that he was not in a position to say by whom, because this was the responsibility of the Council.

Addressing the witness, the Chairman observed that, as Contracts Manager, he ought to know.

Asked by Dr Delia whether this service was being provided by an individual named Saviour Mifsud, the witness declared that he did not know.

Addressing the witness, Dr Delia asked how it was possible that, notwithstanding that he had been engaged both as Contracts Manager to deal with those providing the bulky refuse service and as a member of the Evaluation Committee, he still did not know.

Mr Cefai Mercieca answered that the person providing the service had encountered certain difficulties.

Dr Delia again asked the witness to state who was providing the bulky refuse service to the Local Council. The witness said that he was not in a position to answer, because he knew that there had

been certain difficulties in honouring the service to be provided, and he had not followed the outcome of the Local Council's position.

Dr Delia asked what those difficulties were and insisted that he was not asking about services to be provided before October 2025, but about the new services required since October 2025.

Mr Cefai Mercieca agreed, and when asked again whether there was an ongoing service in Hal Balzan he answered that he had not received any invoices during that period which would indicate that a service was being provided in Hal Balzan.

Dr Delia asked whether it was possible that a service was being carried out without any payments being received, and when the witness had issued a payment.

Mr Cefai Mercieca answered that he did not issue payments but certified the service. He continued that he had done so before October 2025.

In answer to another question by Dr Delia, the witness stated that he was aware of another appeal filed by Malta Recycle relating to the same tender.

Dr Delia asked whether the witness was aware that, during that appeal, evidence had been given that Mr Cefai Mercieca had vested interests with one of the bidders providing services to the Hal Balzan Local Council.

Mr Cefai Mercieca answered that he had read the evidence given by Mr Barun of Malta Recycle. He also explained his role in the newly constituted Evaluation Committee, in which he had stated that Malta Recycle, which had submitted the cheapest bid, had previously provided an unsatisfactory service.

Mr Cefai Mercieca went on to state that three days later he received aggressive threats from Mr Barun, who had learnt of the views he had expressed at the evaluation meeting regarding Malta Recycle's unsatisfactory service, and that as a result he filed a report with the police. Mr Cefai Mercieca continued that, notwithstanding this, he kept receiving further telephone calls. He continued that he informed the Evaluation Committee of all this and that, following legal advice, Malta Recycle's bid was disqualified. Mr Cefai Mercieca added that Malta Recycle appealed, and that this led to the present situation.

Dr Delia insisted that he was concerned with the accusations made at the previous hearing that Mr Cefai Mercieca had economic or financial interests with third parties, neither Malta Recycle nor Simply Clean, giving rise to a conflict of interest. Dr Delia continued that this was what Mr Cefai Mercieca had been accused of, and that he wished to know whether the witness had those alleged interests or not.

Dr Vella objected to Dr Delia's statements and questions and stated that the witness had not said that he had any vested interests, nor that any such interests had anything to do with the present tender.

The Chairman asked Dr Delia to continue with his questions.

Dr Delia stated that he was not linking the alleged accusations to this tender but asked what the witness's position on this Evaluation Committee had been from October 2025 onwards, given that he was already Contracts Manager at a time when he had already formed an opinion on Malta Recycle. Dr Delia declared that he wished to establish whether the witness had adopted an objective approach as a member of the Evaluation Committee and asked the witness to state whether or not there was a conflict of interest.

The Chairman observed that, if need be, the Contracting Authority could call Mr Barun so that he could give his version.

Mr Cefai Mercieca explained that he did not consider that there was a conflict of interest. He explained that about three years before he was appointed Contracts Manager he had been a shareholder in a company which had an agreement with Mr Barun's company for the hiring of vehicles from Mr Barun. He continued that, although this was to have been performed in the locality of Hal Balzan, it never materialised.

At this stage Dr Delia asked the witness whether he agreed that there had been a relationship with a company which had an interest in this tender, and with which the witness also had a relationship.

Mr Cefai Mercieca corrected what he had said earlier and declared that the Contracts Manager's contract is in the name of Yama Yami Limited and not in his personal name, and that it never had any agreements with ... (at which point he was interrupted by Dr Delia); and that the Contracts Manager is therefore not Mr Cefai Mercieca himself but his company.

Dr Delia asked whether it was correct to say that this company, which belongs to the witness, had business agreements with a person who was a bidder.

Mr Cefai Mercieca answered that it was not Yama Yami Limited but a different company.

At this stage Dr Delia asked whether it was correct to say that Yama Yami Limited was not involved, but that Mr Cefai Mercieca, as a shareholder of Yama Yami Limited and as an evaluator, had relations with another company offering services of this type.

Mr Cefai Mercieca did not agree and explained that he personally had a shareholding in a company which had entered into an agreement that never materialised. He continued that the name of that company was M.J. Limited, whose agreements with other companies before 2025 never materialised.

Dr Delia asked what the remit of that company was. Mr Cefai Mercieca stated that M.J. Limited still exists and is not related to the subject in question. He at first answered that he could not remember but then stated that its objects related to human resources and similar matters.

In answer to further questions, Mr Cefai Mercieca stated that the agreement concerned the hiring of vehicles in the form of trucks.

At this point the Chairman asked what the purpose of the trucks was, and the witness said that they were trucks with a small open box at the rear.

Pressed by a member of the Board for further explanation as to the purpose of these trucks, the witness stated that he did not remember exactly what their purpose was, as more than three years had passed.

The Chairman stated that the Board understood that the agreement had been made between two private companies for the hiring of vehicles with open boxes at the rear, and that such an agreement is made for the furtherance of economic activity. He asked the witness to explain from where the financial gains were to be generated, and to clarify whether or not he remembered.

Mr Cefai Mercieca answered that he did not exclude that the trucks could be used for bulky refuse services.

In answer to another question by Dr Delia, the witness stated that the objects of Yama Yami Limited included project management, contract management, research and marketing.

At this stage Dr Delia ended his questioning of the witness.

Cross-examination by Dr Christopher L. Vella

Dr Vella asked the witness whether he had informed the Local Council or the Evaluation Committee about the agreement in which he had been involved with Malta Recycle & Waste Collection Limited.

Mr Cefai Mercieca answered in the negative, since a long time had passed, the agreement had never been implemented, no trucks had ever been hired and no monies had ever changed hands.

Dr Vella asked whether Mr Cefai Mercieca had received any profits from this agreement, to which the witness answered in the negative, continuing that the agreement had been made in view of a bid for a tender which was not accepted, and that the agreement therefore never materialised.

Dr Vella asked the witness whether he had informed the Evaluation Committee about Mr Twanny Barun's telephone calls, and what had happened afterwards.

The witness stated that those telephone calls were one of the reasons why all present were before the Board, and that he hoped that this factor would not be sidelined during the hearing. The witness continued that he had informed the police, the Local Council and the Council's lawyer, but that unfortunately the telephone calls continued in the same manner.

Mr Cefai Mercieca continued that, notwithstanding that he had been advised to withdraw the report so that Mr Barun would not persist in his calls, he never withdrew it.

Dr Vella referred to statements made by Mr Barun concerning the three telephone calls made on the date of the report, in which Mr Barun stated that the subject matter of those conversations was trucks used in another tender. Dr Vella asked the witness what the subject matter was of the conversations in respect of which he had made a report to the police.

Mr Cefai Mercieca answered that he did not agree with the reasons given by Mr Barun, and that the subject matter was what was written in the report to the police.

In answer to further questions by Dr Vella, Mr Cefai Mercieca declared that he had no function in Malta Recycle & Waste Collection Limited, had derived no profits from its undertakings and had no other commercial interest in that company. At this stage the witness also stated that he would have resigned from the Evaluation Committee had he been asked to do so.

The Chairman invited Dr Delia to call further witnesses, and Dr Delia called Ms Doriette Farrugia (ID No. 310387M), Secretary of the Hal Balzan Local Council, to take the stand.

Testimony of Ms Doriette Farrugia (ID No. 310387M) (Secretary, Hal Balzan Local Council) — Summoned by Dr Adrian Delia

In answer to questions by Dr Delia, Ms Farrugia stated that she had been Secretary to the Local Council for the past ten years, and that she was already Secretary when Yama Yami Limited was engaged as Contracts Manager, its remit being to monitor the implementation of a number of tenders issued by the Local Council. She also stated that that company is not involved in the issuing of tenders by the Local Council, and that the Local Council maintains that it is involved only after a tender is awarded to the Preferred Bidder. She further declared that the contract with Yama Yami Limited provides that it may form part of an evaluation committee.

Following further questions by Dr Delia, Ms Farrugia agreed that, notwithstanding her earlier statements, the involvement of Yama Yami Limited also extended to the period before the award of a tender.

In answer to another question by Dr Delia, Ms Farrugia stated that she was not aware of a company named A.J. Limited, and that it had never carried out any work for the Hal Balzan Local Council for as long as she has been Secretary to the Local Council.

At this stage Dr Delia asked who is presently providing the bulky refuse service to the Hal Balzan Local Council.

Ms Farrugia answered that this was being done by direct order by an individual, Mr David Gafa, who is providing the service until this case is concluded, and that he has no connection with any individual or company providing any service to the Hal Balzan Local Council, or involved in any bidding for tenders issued by the Council.

Asked by Dr Delia whether she had been involved when it was decided that Mr Cefai Mercieca would form part of the Evaluation Committee in October 2025, Ms Farrugia answered that she was only secretary to the Committee and that she does not have a vote.

At this stage Dr Delia declared that he had no further questions, but that he would have preferred to put questions to a representative of the Local Council or to other members of the Evaluation Committee, none of whom were present at the hearing.

Intervention by Dr Christopher L. Vella

Dr Vella asked Dr Delia the reason why the latter wished to put questions to the members of the Council.

Dr Delia answered that it was because it is not true that Mr David Gafa is the person performing the direct order, but that someone else is, and that it is not fair for an employee such as Ms Farrugia to bear the responsibility of answering the relevant questions.

At this stage Dr Delia stated that he was asking the Board to summon representatives of WasteServ to disclose who is delivering Hal Balzan's refuse to their plants.

Dr Vella asked what the relevance of this was.

Dr Delia answered that it was relevant because the hearing had before it testimony which is not true, and that he needed to obtain correct testimony.

Dr Vella replied that the hearing would take further time, and that what had to be examined was the conduct of this tender procedure and not what is being done at present.

Intervention by the Chairman

The Chairman invited Dr Delia to formally verbalise his plea.

Dr Delia verbalised that: *"On behalf of Simply Clean Ltd, the Appellant is asking to call more witnesses namely representatives of WasteServ and ERA to give evidence to whom the trucks entering their plants with Bulky Refuse of the Local Council of Hal Balzan, belong."*

At this stage the Chairman invited Dr Vella to verbalise his reply.

Dr Vella verbalised that: *“On behalf of the Hal Balzan Local Council he is objecting to this plea because the competence of this PCRB is to decide about the adjudication that was done about Tender BLC 04/2025. It is clear that the plea in question does not have anything to do with this process and hence it is completely irrelevant for that which is expected of this Board to decide.”*

Intervention by Dr Delia

At this stage Dr Delia reiterated that this plea is relevant because, if what the Appellant is saying is true, namely that the bulky refuse service is being provided by direct order to the party against whom the appeal is directed, who happens to be the Preferred Bidder, this goes to one of the Appellant’s grievances, which states that there was a conflict of interest in the adjudication process. Dr Delia ended by saying that it is precisely this proof of a conflict of interest that the Appellant wishes to establish.

Dr Delia reiterated that the conflict of interest is evident from the very fact that, notwithstanding the ongoing appeal, another solution was found by granting a direct order; and, to make matters worse, Dr Delia insisted that it was not granted to Mr Gafa.

Intervention by the Chairman

The Chairman declared that, owing to the answers given by the witnesses, it is important to establish certain facts, and that the Board was therefore acceding to Dr Delia’s plea and would take the necessary measures to summon representatives of WasteServ and/or ERA for the next sitting.

Conclusion of the Hearing

The Chairman also stated that the Board would inform them why their presence was required. The Chairman also stated that the Board would ask representatives of the Evaluation Committee and of the Local Council to be present for the third sitting, which would be held on the 27th May 2026.

End of Minutes for the 2nd Board Sitting

Meeting Minutes for the 3rd Board sitting on the 1st September 2026

Case 2223 Objection – BLC04/2025 – Service Tender for the Collection of Bulky Refuse and WEEE using Low Emission Service Vehicle for the Hal Balzan Local Council.

On the 1st of September 2026, at 9:00 a.m., the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Dr Vincent Micallef as members, convened the third public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Simply Clean Limited

Dr Adrian Delia – Legal Representative

Mr Melchior Dimech – Company Representative

Contracting Authority – Hal Balzan Local Council

Dr Christopher L. Vella – Legal Representative

Ms Doriette Farrugia – Secretary

Preferred Bidder – Saviour Mifsud (Sole Trader)

Officially declined the invitation.

Interested Party – Malta Recycle & Waste Collection Limited

Did not attend.

Also in attendance

Dr Sheldon Micallef – Legal Counsel, Department for Industrial and Employment Relations (DIER)

Dr Nicky Muscat – Legal Counsel for Mr Ryan Cefai Mercieca

Witnesses

Mr Daniel Tabone – WasteServ Malta Ltd Representative

Ms Pauline Camilleri – Environment and Resources Authority (ERA) Representative

Dr Angelo Micallef – Mayor and Chairperson of the Tender Evaluation Committee

Ms Sefora Debono – Department for Industrial and Employment Relations (DIER)

Opening Statements

The Chairman, Mr Kenneth Swain, welcomed the parties present and declared the third sitting of Case 2223 of the PCRB open.

The Chairman recalled that, at the previous sitting, Dr Adrian Delia had requested that representatives of the Local Council, of WasteServ Malta Ltd and of the Environment and Resources Authority (ERA) be summoned to give evidence under oath. He noted that the representative of the Local Council, Dr Angelo Micallef, was present, and that the representatives of WasteServ and of ERA were waiting outside the hearing room. The Chairman invited Dr Delia to indicate with which witness he wished to proceed.

Witness Testimonies

Testimony of Mr Daniel Tabone (ID no. 203197M) (WasteServ Malta Ltd Representative) — Summoned by Dr Adrian Delia

Mr Tabone was sworn in and confirmed that he would tell the truth, the whole truth, and nothing but the truth.

Asked by Dr Delia whether service providers engaged in the collection of bulky refuse fall under WasteServ or are required to register with it, Mr Tabone explained that the collection of bulky waste and WEEE does not fall under the responsibility of WasteServ but under the responsibility of the local councils. However, all material collected on behalf of a council and delivered to WasteServ's sites is recorded by WasteServ. He stated that WasteServ operates five sites, which he identified as Imrieħel, Hal Luqa, Hal Far, Birżebbuġa, Gozo and Magħtab, and that the council's material is delivered to whichever site is nearest.

Asked whether WasteServ's relationship is with the local council or with the contractor engaged by the council, Mr Tabone stated that the relationship is with the local council, and that it is the local

council which informs WasteServ that a particular operator will be collecting that material on its behalf.

Asked whether the Hal Balzan Local Council had any such arrangement in place, Mr Tabone confirmed that it did. He stated that when he was asked to gather the evidence, he did so, and that the evidence for the period he had been asked about was printed and available at the sitting. For that period, all the material was delivered to the Imrieħel CA site.

Asked whether the records show by whom the material was delivered, Mr Tabone confirmed that the records include the vehicle registration number, the date, the site, the type of waste, the name of the council, and the consignment note issued by ERA.

Dr Delia clarified that he was not seeking to interrogate any particular date, but rather to establish which vehicle had been delivering the waste originating from Hal Balzan during the relevant period. Mr Tabone identified a single vehicle registration number, KAA 334.

Asked in whose name that vehicle is registered, Mr Tabone stated that the record showed the name “Gafa Venus”, and that the email address recorded was gafadavid215@gmail.com.

Mr Tabone confirmed that he would leave all of the documentation with the Board. He was not cross-examined.

Testimony of Ms Pauline Camilleri (ID no. 217785M) (Senior Environment Protection Officer, Environment and Resources Authority) — Summoned by Dr Lennox Vella

Ms Camilleri was sworn in and confirmed that she would tell the truth, the whole truth, and nothing but the truth.

Asked to state her position, Ms Camilleri stated that she is a Senior Environment Protection Officer within the Permitting Unit of the Environment and Resources Authority.

Asked whether she had been requested to carry out any particular research, Ms Camilleri stated that she had been asked to verify whether Simply Clean Limited holds a waste carrier permit, but that in the absence of information as to which vehicles were to be checked she was unable to do so. She explained that she can only confirm a permit by reference to a vehicle registration number.

Asked whether, if given a registration number, she could confirm the permits held, Ms Camilleri confirmed that she would be able to check whether any permits are held in respect of that vehicle and under which classes.

Asked whether a list of permit holders exists, Ms Camilleri stated that a list is published online on the ERA website and is updated every Tuesday with all valid permits.

Asked whether that list is historical, Ms Camilleri stated that it is not. The website shows only permits which are currently active; a permit which expired the previous day would no longer appear. In order to obtain the permit history of a particular vehicle, the registration number must be sent to ERA, which would then search its archives.

Ms Camilleri was not cross-examined.

The Chairman thanked the witness and observed that her attendance had been requested by the Interested Party, which had not attended the sitting. Dr Delia and Dr Christopher L. Vella confirmed that the request had been made by Dr Lennox Vella. The Chairman noted that all parties had been duly notified and that the Board was available to all.

Testimony of Dr Angelo Micallef (ID no. 125286M) (Mayor and Chairperson of the Tender Evaluation Committee) — Summoned by Dr Adrian Delia

Dr Micallef was sworn in and confirmed that he would tell the truth, the whole truth, and nothing but the truth.

Dr Micallef confirmed that he has served as Mayor since 2021. Asked who the operator was prior to this tender, he stated that he would be guessing if he gave a name.

Asked what his own involvement in this tender had been, Dr Micallef stated that he had acted as Chairman of the Evaluation Committee, without a vote.

Dr Delia explained that his grievance was not directed at the Local Council as such, but was to the effect that in the course of the process one of the bidders, namely Saviour Mifsud, did not hold the mandatory requirements necessary to participate in the call for tenders. As regards his own client, Dr Delia asked whether the Evaluation Board had found any reason to reject Simply Clean Limited on grounds of technical compliance rather than on price, noting that the fourth grievance complains that no reason was given, and that the reply attributed the rejection to price. He stated that he wished to establish that his client's offer was compliant.

Dr Micallef stated that the Evaluation Board had proceeded step by step and had carried out the evaluation as regards compliance, but that after a year he could not recall the reasons in respect of each individual bidder. He added that it was not he who carried out the evaluation; the evaluation was performed by the members who held a vote, whereas his role was to supervise the meeting and ensure that it was properly conducted.

The Chairman suggested that a copy of the evaluation report be furnished to Dr Micallef so that he could refer to it.

Dr Christopher L. Vella objected, submitting that his understanding was that the present sitting concerned the alleged conflict of interest of one of the members of the Evaluation Committee, the first four grievances having already been the subject of final submissions, and that today's sitting therefore concerned the fifth grievance. He submitted that the evidence being sought was not relevant.

Following exchanges between counsel, the Chairman gave a direction. He observed that the role of the chairperson of an evaluation board is well understood and that the person in that role manages the process. He stated that the matter was one of fairness and was not a technical matter, namely whether the Appellant's offer had passed the technical evaluation stage and proceeded further, and that he did not wish the sitting to be delayed on that point. He directed that a copy of the evaluation report be furnished to Dr Micallef, and a short recess was allowed for the witness to consider it.

Dr Christopher L. Vella reminded the Board that the question underlying the present sitting was whether there was any connection between Mr Gafa, who is presently operating the service, and the potential awarded bidder.

Having considered the evaluation report, Dr Micallef stated that the only matter he was able to assert was that the only bidder found to be lacking in compliance at an administrative level was Malta Recycle & Waste Collection Limited, on the ground that it had violated rule 14.2 of the General Rules Governing Tenders, as per the police report reference number recorded therein.

Asked by Dr Delia whether, in the part of the report dealing with the evaluation of Saviour Mifsud, there was any note as to whether he did or did not hold the employment licence which the tender

required in mandatory terms, Dr Micallef stated that the report in respect of Mr Saviour Mifsud, so far as he could see, related to the financial evaluation and to a clarification.

Dr Delia had no further questions for the witness.

Testimony of Ms Sefora Debono (ID no. 527990M) (Department for Industrial and Employment Relations) — Summoned by Dr Adrian Delia

Ms Debono was sworn in and confirmed that she would tell the truth, the whole truth, and nothing but the truth.

Asked to state her position, Ms Debono stated that she holds a senior compliance role within the Department for Industrial and Employment Relations (DIER).

Asked whether she had been requested to produce documentation or to carry out any research, Ms Debono stated that she had been asked to provide information in relation to a query. She explained that Mr Twanny Barun had asked the Department whether he required a licence for his business. She stated that he is self-employed, without employees, operating in bulky refuse.

Asked whether there is any requirement for a person working in bulky refuse to hold a licence, Ms Debono stated that the Department had evaluated his situation and his business and that no such licence was required in his case.

Dr Delia put to the witness that where a tender stipulates that a bidder must hold a Temporary Employment Agency Licence or an Employment Agency Licence, that licence is issued by DIER. Ms Debono confirmed that the licence is issued by the Department.

Asked whether there is a register showing who holds such a licence, Ms Debono stated that a list of all licence holders is published on the employment agencies portal, and confirmed that she has access to that portal from her mobile telephone and could carry out a check.

Asked whether Mr Saviour Mifsud holds such a licence, Ms Debono answered that he does not. Asked how she was able to answer immediately, she explained that she had anticipated that this would be one of the questions put to her and had therefore carried out the check in advance.

Ms Debono was not cross-examined. The Chairman thanked the witness.

Final Submissions

Final Submissions by Dr Adrian Delia (for the Appellant)

Dr Delia stated that he would address the grievances one by one.

As to the first grievance, concerning the failure to provide information, Dr Delia submitted that the grievance remains and had been raised on several of the occasions on which the parties had appeared before the Board. He stated that to date he had never been in a position to have all of the information, and that much of what had been heard at the present sitting was not confidential information. He submitted that where counsel appears to defend a party and makes the point that his client is compliant while, so far as he is aware, the other bidder is not, it is difficult to prove that case unless the material is available in advance. He had come before the Board, produced witnesses and made the attempt, but it would have been far easier had the information been in the parties' hands beforehand. The grievance was, and remains, a good one, even if on its own it may not achieve the result the Appellant seeks.

As to the second grievance, concerning non-compliance, Dr Delia submitted that the point had now been established: it is now known that Mr Saviour Mifsud does not hold the licence. He accepted that the witness was correct in stating that a licence was not required for Mr Mifsud's own line of work but submitted that the tender imposed a higher level of requirement, namely that the bidder must hold this licence, which must be applied for, which costs money, and which must be maintained. He submitted that the requirement carries a meaning: it signifies a level of oversight, including the ability to verify how much workers are being paid, rather than leaving an operator free to pay what he wishes. He said he commended the Council for having imposed that requirement in order to do things properly but submitted that the Council had then relied on a declaration by Mr Saviour Mifsud which was not true, in that he was never going to obtain the licence. He contrasted this with Mr Barun, who had gone to the Department and asked whether he needed the licence and had been told he did not; but the requirement in this tender was mandatory, and this bidder did not hold it.

As to the fourth grievance, Dr Delia submitted that it is not a negative grievance but a positive one, and that it too had been proved by the evidence, since the Appellant must also establish that its own offer was compliant. He submitted that if another bidder is to be disqualified, the Board must have the comfort that the Appellant is itself compliant; otherwise the procedure would have to be cancelled for want of any compliant bidder.

As to the third grievance, Dr Delia explained that it had necessarily been drafted in general terms because the Appellant did not have the information beforehand, and that he had framed it so as to safeguard the Appellant's position in respect of whatever might subsequently emerge.

As to the fifth grievance, concerning the conflict of interest, Dr Delia indicated that he did not feel able to withdraw it, having regard to the evidence which had been given.

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

As to the first grievance, concerning the information requested, Dr Vella stated that the matter had already been treated in the Contracting Authority's reply and in its submissions, and that he did not intend to repeat what had already been said.

As to the second grievance, concerning the licence, Dr Vella submitted that the Evaluation Committee is bound to act in accordance with what the tender says. It cannot go beyond the tender document and cannot impose or expect something which the tender document did not require. He invited the Board to consider what the tender document required of bidders in respect of this licence, and quoted Article 5 of the tender document:

"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..."

Dr Vella emphasised the words "prior to Contract Signing": not at the point of the bid, and not prior to the bid, but after the bid is awarded. He submitted that the tender document therefore did not require a bidder to submit the licence itself, nor in truth to hold that licence at that point; what it required was a self-declaration that, if awarded the contract, the bidder would hold the licence at the moment of signing. Whether that was good or bad drafting was not something he would enter into, and nor was it the task of the Evaluation Committee to enter into it.

Dr Vella submitted that the obligation of the Evaluation Committee is to see what the tender documents require, to see what the bidders present, and to determine whether they are administratively and technically compliant; if they pass those two tests, they proceed to the financial

test. The Evaluation Committee saw that the self-declarations had been presented, and it was not under an obligation to verify whether the bidders in fact held the licence, as was being attempted at the present sitting. He added that he had not interrupted during the sitting, but that in truth all of the evidence produced by the Appellant that day was, with all due respect, irrelevant, and that he had objected to the sitting being held because he had anticipated that it would be so.

Dr Vella referred to three judgments cited in the Contracting Authority's reply as treating this point: Leone Grech vs Jobsplus, id-Direttur Ġenerali tal-Kuntratti u South Lease Limited; Cherubino Limited vs Dipartiment tal-Kuntratti et, decided by the Court of Appeal on the 3rd October 2018; and Case 1891, Pharmachemic Trading Agency Company Limited vs Central Procurement and Supplies Unit, decided by this Board. He submitted that all three treat the position that where a self-declaration is requested, the licence itself is not being requested; what is requested is a declaration that the bidder will hold that licence.

Dr Vella submitted that he could not agree with his colleague's suggestion that the Evaluation Committee ought to have gone further, since that would amount to suggesting that the Committee should have discriminated by expecting something which the tender documents themselves did not require. To say that a bidder who did not present the licence should for that reason be disqualified would be to act against the tender document, which at no point requested the licence, but requested a self-declaration that the bidder will hold the licence upon contract signing.

Turning to the conflict of interest, Dr Vella recalled that the issue had arisen following the testimony of Mr Twanny Barun, when he had questioned Mr Barun about the telephone calls he had made to one of the evaluators. Mr Barun had said that he had asked one of the evaluators about a van which he said had been used in a tender. Dr Vella recalled the context in which the parties had come before the Board: in the connected appeal concerning the offer of Mr Barun, Mr Barun had been disqualified because one of the evaluators had filed a police report to the effect that he had been provoked and intimidated.

Dr Vella recalled that, at the second sitting in these proceedings, Mr Ryan Cefai Mercieca had testified as to the relationship he had had with Mr Barun, stating that some three years before this tender he had entered into certain negotiations with Mr Barun but that nothing had materialised from them. Nothing had been signed, no profits or monies had ever resulted, and no company had come of it; what Mr Mercieca had said was that there had been discussions or negotiations. Dr Vella submitted that this was the relationship, and that it was possible the Board had raised an eyebrow at the time, but invited the Board to consider what in law constitutes a conflict of interest.

Dr Vella submitted that not everything amounts to a conflict of interest, and that knowing a person does not of itself mean that a conflict exists. Malta is small and almost everybody knows everybody; a person may know another from television or from some other quarter without ever having spoken to him. He invited the Board to consider the definition of conflict of interest, and quoted from the Public Procurement Regulations:

"...any situation where any person, including staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority, who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure."

Dr Vella laid emphasis on the words "directly or indirectly" and on the closing words, "in the context of the procurement procedure". He submitted that both Mr Mercieca and Mr Barun had confirmed

that Mr Mercieca had nothing which was related to this procurement procedure. He further submitted that if there had been any financial interest as between Mr Barun and Mr Mercieca, it must be recalled that Mr Mercieca is the person who reported Mr Barun and whose report led to Mr Barun's disqualification; any interest would therefore have had to be an interest in favour of Mr Barun, which does not sit with the reasoning which ultimately led to Mr Barun being disqualified on the strength of what Mr Mercieca reported.

Dr Vella submitted that the matter should not be viewed through a prima facie lens alone, and invited the Board to examine in detail what the law requires before a conflict is found. In his submission, on what had been said by both witnesses and on what the law requires, no conflict of interest existed. He observed that in an ideal world nobody would know anybody and evaluators would spend their lives in a room, never meeting anyone and never attending any social occasion, but that this is not the reality in Malta; and that were such persons to be excluded, the benefit of the life experience they bring would be lost.

Replica by Dr Adrian Delia (for the Appellant)

Responding to the submissions of the Contracting Authority, Dr Delia stated that he had no difficulty with the Board once again pronouncing itself, not by way of definition but by way of judgment, on the question of conflict of interest, if the Board considers this to be such a case. He observed that if the matter does not clear the first hurdle he did not consider that necessary, but added that the Board had already expressed itself on conflict of interest in detail in an appeal in which he had himself been involved, including the WasteServ matter which had gone before the Court on conflict of interest.

As to the three judgments cited by the Contracting Authority, Dr Delia stated that he had himself been involved in two of them, South Lease and Cherubino, and submitted that they are absolutely not on all fours with the present case. He submitted that the difference lies not in what the Council required at the time of tendering: in those two cases what had been requested was the declaration, and subsequently, upon signing, the party had in fact obtained what the tender required. In the present case, neither beforehand, nor at the time of the declaration, nor at the time of contract, nor to this day, has the Recommended Bidder held the licence which the tender required.

Dr Delia submitted that if the interpretation advanced by his colleague were adopted, a declaration would be worth nothing: a bidder would make a declaration precisely in order not to honour it, would breach it, would still take the tender and would still perform the work. On that footing mandatory conditions would be there for nothing. He submitted that the Board should therefore define not only what constitutes a conflict of interest but also what it means to make such a declaration, since to make a false declaration and to proceed regardless raises the question whether the police must be brought into the matter, there having been a declaration that the bidder would hold a licence which he did not hold.

Conclusion of the Hearing

With no further submissions from either party, the Chairman, Mr Kenneth Swain, thanked all parties present and formally concluded the sitting.

End of Minutes for the 3rd Board Sitting

Hereby resolves:

The Board refers to the minutes of the Board sittings of the 3rd March 2026, the 14th April 2026 and the 1st September 2026.

Having noted the objection filed by Simply Clean Limited (hereinafter referred to as the Appellant) on the 12th December 2025, refers to the claims made by the same Appellant with regards to the tender of reference BLC04/2025 listed as case No. 2223 in the records of the Public Contracts Review Board.

Appearing for the Appellant:

Dr Adrian Delia

Appearing for the Contracting Authority:

Dr Christopher L. Vella

Whereby, the Appellant contends that:

a) ***First and Preliminary Grievance — Failure to Provide Requested Information***

Reference is hereby being made to a request made to the Contracting Authority, on the 9th of December 2025. This request contained several specific, non-confidential, material and strictly relevant questions directly concerning the evaluation process and the Recommended Bidder's compliance with mandatory participation requirements. By means of a reply dated 10th December 2025, the Contracting Authority provided only partial and selective information, withholding the majority of the key questions raised. No legal basis, no justification, and no claim of confidentiality was provided to support the withholding of this information. The information requested by the Appellant concerns fundamental elements of transparency, namely, the composition of the Evaluation Committee, verification of mandatory licences, reliance on subcontractors or third-party capacity, and whether the Recommended Bidder was afforded rectifications or clarifications. These matters do not fall within the sphere of commercial confidentiality, and in any case could be disclosed with appropriate procedural safeguards if truly sensitive.

The following information was requested:

1. The number of Evaluation Committee members, including the total number of evaluators appointed this procedure.
2. The names of the evaluators forming part of the Evaluation Committee, including any changes to the Committee's composition throughout the process.
3. Clarification as to the requirement under Article 5 of the tender document relating to the possession of a Temporary Employment Agency or Employment Agency licence.

4. I kindly request confirmation: i) whether all bidders, including the recommended bidder; were compliant with this requirement; and ii) whether any verification or documentary checks were carried out in this regard.
5. Information on whether any bidder relied on the capacity of third parties or declared any form of subcontracting as part of their offer, including: i) the proportion and nature of any subcontracted services; and ii) whether the recommended bidder relied on subcontractors or on the capacity of third parties in order to satisfy any eligibility, technical, or professional capacity requirements.
6. Specific clarification on whether there was any reliance on a Temporary Employment Agency (as required under Article 5) by the recommended bidder or any other bidder
7. Whether the preferred bidder was given the opportunity to rectify/clarify any part of its bid.

As a result of this non-disclosure, the Appellant has been placed in a position of total opacity, where it is unable to understand the basis upon which the Recommended Bidder was deemed compliant. This has forced the Appellant to file an objection without visibility of the material facts, thereby undermining equality of arms and the Appellant's right to an effective remedy. The Contracting Authority's failure to provide the information constitutes a manifest breach of Article 40 of the Public Procurement Regulations, and a serious violation of the principles of transparency, equal treatment and procedural fairness.

In view of the foregoing, the Appellant Company is thereby requesting the Honourable Board, through an interim measure in accordance with reg. 90 (4) of S.L. 601.03 and in any case prior to the scheduled hearing, to order Contracting Authority/or whosoever, to release the information requested.

Given the Contracting Authority's refusal to provide the information, the Appellant hereby reserves all rights, to the fullest extent permitted by law, to submit further or supplemental grievances, documentation, and evidence, should any additional irregularities or breaches emerge once the information is disclosed.

b) ***Second Grievance — Possible Non-Compliance with Article 5 (Employment Agency Licence Requirement)***

The Appellant once again reiterates its complete lack of visibility on whether the Recommended Bidder or any other bidder complied with the mandatory requirement under Article 5 of the tender document relating to the possession of a Temporary Employment Agency Licence or Employment Agency Licence. This requirement constitutes a material condition of participation, failure of which should result in automatic disqualification. However, due to the Contracting Authority's failure to disclose even basic administrative compliance information, the Appellant remains entirely uninformed.

The Appellant stresses that the requested documentation is not confidential, and its withholding violates transparency, equal treatment, and the principles of the Remedies Directive.

Accordingly, the Appellant must raise this grievance based on the very limited information, reserving all rights should it result that the Recommended Bidder: i) did not possess the required licence ii) submitted incomplete or outdated documentation; or iii) was allowed irregular rectifications or clarifications.

The Appellant therefore respectfully requests the Honourable Board to order the disclosure of:

i. Whether all bidders submitted a valid Temporary Employment Agency Licence and/or Employment Agency Licence; ii. Whether such documentation was verified for completeness and validity.

Pending disclosure, the Appellant reserves all rights to expand upon this grievance.

c) ***Third Grievance — Potential Other Irregularities, Omissions and Inconsistencies***

Given the Contracting Authority's persistent failure to disclose essential information, the Appellant cannot ascertain whether the Recommended Bidder's offer suffers from other material irregularities, omissions or inconsistencies. Such potential irregularities may relate to administrative documentation, eligibility criteria, technical compliance, subcontracting declarations, or reliance on third-party capacity. This grievance is therefore raised as a protective measure, solely due to the informational blackout imposed on the Appellant. The Appellant expressly reserves all rights to supplement, amend, or expand this grievance once the requested information is released and further irregularities, if any, are identified.

d) ***Fourth Grievance — Appellant's Bid is Fully Compliant***

Without prejudice to the above grievances, and firmly reserving all rights, the Appellant respectfully submits that its offer was in all respects fully compliant with the administrative, eligibility, technical and financial requirements of the tender document issued by the Contracting Authority. The Appellant confirms that all documentation, declarations, certifications, technical specifications, and confirmations required under the tender, including all mandatory conditions, eligibility criteria, licencing requirements, and service delivery obligations were duly submitted, complete, valid, and fully aligned with the tender specifications. To date, the Contracting Authority has not identified or communicated any administrative or technical non-compliance, nor has it provided any form of substantiated explanation as to why the Appellant's bid was deemed inferior to the Recommended Bidder's. This is particularly significant given the refusal or failure to provide the requested evaluation information, thereby placing the Appellant in a procedurally disadvantaged position. In light of the Appellant's full compliance, the Appellant is entitled to understand how its conforming offer was assessed as unsuccessful, and whether the evaluation was carried out in accordance with

the law, the tender conditions, and the principles of equal treatment and transparency. The continued withholding of the evaluation details prevents the Appellant from understanding the basis upon which its compliant offer was disregarded. The Appellant therefore submits this grievance on the basis that, unless proven otherwise through disclosure of the relevant documentation and evaluation records, the Appellant's offer must be deemed fully responsive and eligible for award, and that any departure from this conclusion would require clear, justified and transparent reasoning by the Contracting Authority. The Appellant accordingly reserves all rights to expand upon this grievance, submit further evidence, and make additional submissions once the requested information is provided or ordered to be disclosed by this Honourable Board.

This Board also noted the Appellant's fifth grievance filed on the 13th March 2026, following the hearing of Case Number 2222 (Malta Recycle & Waste Collection Limited vs Hal Balzan Local Council, concerning the same tender, BLC04/2025), whereby, the Appellant contends that:

e) ***Fifth Grievance — Irregular Composition of the Evaluation Committee***

The Appellant Company makes reference to objection number 636, presently being heard before this Honourable Board, in relation to the same tender procedure, namely *BLC04/2025 – Service Tender for the Collection of Bulky Refuse and WEEE using Low Emission Service Vehicle for the Hal Balzan Local Council*. Without entering into the substantive merits of the said objection, which remains distinct from the present proceedings, it nevertheless emerged from the facts and testimony given during those proceedings that Mr Ryan Mercieca formed part of the Evaluation Committee responsible for assessing the bids submitted under the present tender procedure.

It further resulted from the evidence presented before this Honourable Board, and particularly from the testimony of Mr Anthony k/a “Twanny” Barun, that Mr Ryan Mercieca is not only employed as Contracts Manager with the Hal Balzan Local Council, but has also been directly commercially involved with one of the economic operators active in the same sector. A full transcript of those proceedings was annexed to the Note as DOC A.

The Appellant Company submits that it did not know, nor could it reasonably have known, that Mr Ryan Mercieca formed part of the Evaluation Committee during the course of the present procurement procedure. Indeed, this information was specifically requested by the Appellant through correspondence dated the 9th December 2025, wherein the Appellant requested the names and composition of the Evaluation Committee. This information was never disclosed by the Contracting Authority.

The facts which have since emerged during the proceedings of the said objection raise serious and legitimate concerns regarding the independence, impartiality and regularity of the Evaluation Committee which conducted the evaluation of the present tender.

In particular, the testimony presented before this Honourable Board indicates that Mr Mercieca has maintained a direct commercial relationship with Mr Barun, including circumstances where vehicles belonging to Mr Barun or his company were utilised in connection with tender submissions by Mr Mercieca in other localities. The testimony also indicates that Mr Mercieca himself has participated, or has been involved, in tender submissions for similar bulky refuse collection services with other local councils.

Furthermore, the same proceedings revealed that direct contact occurred between Mr Mercieca and Mr Barun in relation to the present tender procedure, which contact was confirmed through documentary evidence including telephone records and private correspondence exchanged between the parties.

Without entering into the full merits of those proceedings, the Appellant respectfully submits that these circumstances raise serious questions regarding the independence and impartiality required of any member of an Evaluation Committee in a public procurement procedure.

Public procurement procedures conducted under Subsidiary Legislation 601.03 must be carried out in strict compliance with the fundamental principles of transparency, equal treatment, proportionality and non-discrimination, which principles derive from both Maltese law and Directive 2014/24/EU.

Central to these principles is the requirement that members of the Evaluation Committee must be entirely independent and free from any conflict of interest.

Regulation 43 of the Public Procurement Regulations defines a conflict of interest as any situation where staff members of the contracting authority involved in the conduct of a procurement procedure have, directly or indirectly, a financial, economic or other personal interest which might compromise their impartiality and independence in the context of the procedure.

The obligation imposed upon contracting authorities is therefore not merely to avoid actual bias, but also to prevent situations which may objectively compromise, or appear to compromise, the impartiality of the evaluation process.

In the present case, the facts emerging from the related proceedings suggest that Mr Mercieca was simultaneously a Contracts Manager within the Contracting Authority; a member of the Evaluation Committee responsible for assessing the present tender; and a person commercially active, or directly associated with economic operators active, within the same sector of bulky refuse collection services for local councils.

The Appellant respectfully submits that such circumstances create, at the very least, an objective appearance of conflict of interest.

Even assuming, arguendo, that no actual bias occurred, it is well established in both Maltese and European jurisprudence that the mere existence of circumstances capable of undermining the appearance of impartiality is sufficient to vitiate the legality of the decision-making process.

In the judgment *MTR Contracting Limited vs Direttur tal-Kuntratti et* (Court of Appeal – Superior Jurisdiction, 20th June 2013), the Court held that:

“Il-fatt li l-kunflitt ta’ interess ma kienx direttament bejn is-soġjetà li tefgħet l-offerta u xi membru tal-kumitat ta’ evalwazzjoni ma jfissirx li dik ir-relazzjoni setgħet tiġi mwarra... Din il-parentela, minnha nnifisha, tobloq neċessarjament konflitt ta’ interess... Iċ-ċirkostanza li hemm missieru involut iddgħajjef l-apparenza ta’ oġġettività u serjetà fl-evalwazzjoni. L-apparenza ta’ serjetà hija kważi importanti daqs li jkun hemm fil-fatt dik is-serjetà fl-istħarriġ tal-offerti.”

The Court therefore emphasised that the appearance of objectivity and seriousness in the evaluation process is almost as important as the existence of objectivity itself. Similarly, in *Ismeri Europa Srl vs Court of Auditors of the European Communities* (Case T-277/97), confirmed on appeal in Case C-315/99, the European courts held that:

“A conflict of interest constitutes, objectively and in itself, a serious irregularity without there being any need to qualify it by having regard to the intentions of the parties concerned or to establish that it caused quantifiable material injury.”

The legal position is therefore unequivocal: the existence of an objective conflict of interest, or even of circumstances giving rise to such an appearance, constitutes a serious procedural irregularity in public procurement procedures.

The Appellant respectfully submits that the Contracting Authority was under a clear legal duty to ensure that any person whose impartiality may reasonably be questioned is excluded from the evaluation process.

Contracting authorities are required to take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in procurement procedures. No indication has emerged that any such safeguards were implemented in the present case.

On the contrary, the participation of Mr Mercieca in the evaluation process appears to have occurred without disclosure to the economic operators and without any apparent assessment of the potential conflict arising from his commercial dealings within the same sector.

The Appellant respectfully submits that the participation of an evaluator whose impartiality is objectively questionable undermines the integrity of the entire evaluation process.

The evaluation of tenders is a collective process which requires the independent and impartial judgment of all members of the Evaluation Committee. The presence of even a single member whose independence is compromised is capable of tainting the entire evaluation procedure.

In these circumstances, the Appellant submits that the composition of the Evaluation Committee was irregular and incompatible with the requirements of public procurement law, and that the evaluation process conducted in the present tender procedure must consequently be considered legally flawed and procedurally irregular, thereby vitiating the resulting award decision.

In view of the aforesaid, the Appellant requested this Board to: [a] review the appointment of Mr Ryan Mercieca to the Evaluation Committee of the procurement procedure under review, and determine that this appointment is in conflict with, inter alia, S.L. 601.03 and the General Rules Governing Tenders; [b] determine that Mr Ryan Mercieca should not have been appointed to the Evaluation Committee; [c] order the re-evaluation of all bids by a newly constituted board; or [d] order, if it is more appropriate, the cancellation of the procurement procedure in accordance with regulation 90(3) of Subsidiary Legislation 601.03; and [e] take all such measures which are conducive and ancillary to the proper execution of the above requests.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on the 22nd December 2025, the Contracting Authority's Reasoned Letter of Reply to the Note and Additional Grievance filed on the 23rd March 2026, and its verbal submissions during the hearings held on the 3rd March 2026, the 14th April 2026 and the 1st September 2026, in that:

a) ***First and Preliminary Grievance — Failure to Provide Requested Information***

In its first ground for appeal the Appellant submits that following the request to: be provided information, only partial and selective information was provided. The Appellant submits that the information requests was not confidential and thus the Contracting Authority's failure to provide the information is in breach of article 40 of the PPR. In view of this the Appellant request this Honorable Board to order the Contracting Authority to release the requested information, including in accordance with regulation 90(4) of the PPR. It is evident that this appeal relies exclusively on the information requested by means of an email dated 9th December, 2025 and its material objection refers to the Contracting Authority's decision not to provide the requested information. The Contracting Authority firmly maintains that it has acted in accordance with the principles of transparency, non-discrimination and procedural fairness. In fact following the request made by Dr. Adrian Delia on behalf of the Appellant on the 9th of December, 2025, the following day, on the 10th of December, 2025, the Contracting Authority replied to the requests by providing ... information regarding the number of Evaluation Committee members and informing the Appellant that only information related to the bid of the Appellant can be provided.

Following due consideration of the requests made, the Contracting Authority considered that the other information requested cannot be provided. From a review of the appeal filed and the email sent by Dr. Adrian Delia, it becomes evident that the Appellant does not even attempt at justifying the request for information. Thus such request for information cannot be simply made as a fishing expedition as the email and the appeal in question are portrayed. From a review of sub-regulation 40(2) it is evident that none of the information requested falls within the information which the legislation does not consider as confidential. Regulation 40 is not to be given a wide interpretation as is being implied by the Appellant but should rather be given a restrictive interpretation in order to protect the confidential information and commercially sensitive information which each bidder provides to the Evaluation Committee. In fact this article should be read in conjunction with other regulations and rules.

Reference is made to Regulation 242(2) of the PPR. From a review of this sub-regulation it becomes amply evident that none of the requests fall within the instances allowed by law to provide information. The Appellant requested very specific information regarding the technical offer of other bidders, information which is not included in this list of information to be disclosed. The legislator has on two separate occasions (Regulation 40 and Sub-Regulation 242(2)) included lists of the information which a Contracting Authority may provide and yet none of such lists include specific information related to the bid of other tenders.

Reference is made to article 14.2 of the General Rules Governing Tenders. The Rules Governing Tenders went a step further and included a list of what may not be provided. It is evident that the information requested by the Appellant falls squarely within the list of information which may not be provided. This regulation allows for an exception where “permitted or required by law”. However the Appellant fails to indicate any particular legislation which permits for the information which the Appellant is very specifically requesting to be provided. It is in full cognisance of such rules and regulations that the Evaluation Committee acted with utmost responsibility in limiting the information which may be provided to the Appellant and acted in accordance with the law.

b) ***Second Grievance — Possible Non-Compliance with Article 5 (Employment Agency Licence Requirement)***

As part of its second grievance, the Appellant relies on the grounds made in the first grievance and argues that the Recommended Bidder did not possess the required licence, submitted incomplete or outdated documentation or was allowed irregular rectifications or clarifications. To this end the Appellant requested the Honourable Board to order the disclosure of whether all bidders submitted a valid Temporary Employment Agency Licence and/or Employment Agency Licence and whether such documentation was verified for completeness and validity. The Contracting Authority will not repeat the submissions made for the First Grievance which justify its decision to limit the information provided but feels compelled to point out that the information being

requested by the Appellant was not even requested in the Tender Document. It is crucial to note that Article 5 of the Tender Document required:

“Economic Operators shall submit a Self-Declaration whereby they declare that should they be the Recommended Awarder, 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. \$52.130), 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....”

Thus the Tender Document did not require the bidders to provide the licence itself but rather a self-declaration that prior to contract signing they shall be in possession of such certificate. It would go against the principle of self-limitation should the Contracting Authority, or the Board, now require a document from the bidders, which was never required in the Tender Document. On this basis alone, such a request by the Appellant shall not be upheld: The evaluation committee is bound by the principle of self limitation and thus has to limit its consideration to what is requested in the tender documents and the documents submitted in line with the tender documents and from that end, the recommended bidder was fully compliant and the evaluation committee would have been in breach of the principle of self-limitation and other general principles of public procurement if it had to reject an offer for some consideration not forming part of the tender submission.

Reference is made to Case 1891 Pharmachemic Trading Agency Company Limited vs Central Procurement and Supplies Unit’ delivered by the PCRB on 10th July, 2023 which was an appeal also based on similar grounds to the second grievance of the Appellant and which was rejected by this Honourable Board. Thus it humbly submitted that the second grievance should be rejected in its entirety and the requests made by the Appellant as part of this grievance should be outrightly rejected.

c) ***Third Grievance — Potential Other Irregularities, Omissions and Inconsistencies***

The Third Grievance is also based on the premise that certain information. was not provided and is in essence a reservation, by the Appellant, to raise further grievances should it emerge that there were other irregularities, omissions and inconsistencies. The Contracting Authority denies any “informational blackout” and asserts that the evaluation was carried out according to the law and the criteria set out in the tender document.

d) ***Fourth Grievance — Appellant’s Bid is Fully Compliant***

The fourth grievance is not essentially a contestation to any part of the assessment but rather an assertion that the Appellant’s bid is fully compliant. The Contracting Authority submits that as is evident, the administrative and technical compliance is not sufficient on its own. As the Appellant is fully aware, the award criteria was the price and the contract was to be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria. Thus the Appellant’s submissions that the Contracting Authority has not “provided any form of

substantiated explanation as to why the Appellant's bid was deemed inferior to the Recommended Bidder's" is striking. Comparing the financial bid of the Appellant at €74,500 to the Recommended Bidder's bid of €22,400, requires no further comments as to the Appellant's quest for a substantiated explanation as to why the tender was not awarded to the Appellant.

e) ***Fifth Grievance — Alleged Irregular Composition of the Evaluation Committee***

The Appellant's fifth grievance concerns the "*irregular composition of the Evaluation Committee*", specifically alleging a conflict of interest involving Mr Ryan Mercieca, one of the appointed Evaluators. The Contracting Authority maintains that these allegations are unfounded and submits as follows.:

Allegations based on mere assumptions and unproven claims. The Appellant's grievance relies entirely on testimony from separate proceedings (Objection 636) and "facts" that have not been legally established in the context of the present tender. The Appellant asserts that Mr. Mercieca has "direct commercial involvement" with other operators yet fails to provide any evidence that such alleged historical involvement exists and that if it does that this influenced the evaluation of this specific tender. The Contracting Authority submits that a grievance cannot be sustained on mere allegations and "serious concerns" without concrete proof of a breach of duty.

Misinterpretation of "Conflict of Interest" Under the Public Procurement Regulations (S.L. 601.03), a conflict of interest requires a situation where a staff member has a financial economic or personal interest that "might be perceived to compromise" their impartiality. Definition provided hereunder:

"Conflicts of interest shall at least mean any situation where any person, including staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority, who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure."

The legislator was very clear in requiring a conflict of interest to be specific. Such an interest must be financial, economic or personal, and it must also be one which is perceived as compromising the impartiality and independence of the procurement procedure. A mere allegation that an evaluator is an acquaintance of one of the economic operators is not sufficient, and is certainly not tantamount to a conflict of interest. In fact, there exists no evidence of bias, and the tenders mentioned by Mr Twanny Barun do not even relate to the Balzan Local Council.

The Evaluation Committee acted collectively, and the Appellant has failed to show how the acquaintance of one member to one of the bidders, who was not even awarded with the bid at

issue, has in any manner tainted the evaluation of the bids or the bidding process itself. It is crucial to point out that the allegations being made pertain to a bidder who was not awarded with the bid and who was disqualified from the bidding process. How can one argue that Mr. Mercieca had some form of bias in favour of Mr. Twanny Barun when the bid of Malta Recycle and Waste Collection Limited was disqualified from this whole process?

As established in the initial award letter, the sole criterion for this award was price. The successful bidder offered a price of €22,400, while the Appellant's bid was significantly higher at €74,500. No amount of alleged "influence" could bridge a €52,100 price gap in a "cheapest price" tender.

Failure to Justify Re-evaluation or Cancellation The Appellant's request to re-evaluate all bids or cancel the procedure is an extreme remedy that is entirely disproportionate to the speculative nature of their claims. There is no "objective appearance of conflict" when an evaluator simply performs their job based on clearly defined, price-based criteria. It is evident that any re-evaluation by different evaluators will lead to the same outcome since no bid was deemed as being technically or administratively non-compliant. Thus the request being made by means of the fifth grievance will, if acceded to, only have the implication of prolonging this matter without any material effect.

On the basis of the foregoing, the Contracting Authority contends that the Public Contracts Review Board should reject this additional grievance in its entirety and confirm the original decision of the Council.

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 the Appellant's grievances.

Preliminary Note: Relationship with Case 2222, and Order of Treatment

This case and Case 2222 (Malta Recycle & Waste Collection Limited vs Hal Balzan Local Council) arise from the same tender, BLC04/2025, and were heard together by this Board. It was the evidence given in Case 2222, principally the testimony of Ms Marie Claire Tabone, Dr Angelo Micallef and Mr Twanny Barun, that first disclosed the relationship between Mr Ryan Cefai Mercieca, an Evaluator on the Committee for

this tender, and Mr Twanny Barun, director of Malta Recycle & Waste Collection Limited, one of the six bidders under this tender. That evidence drove the Appellant to file the Note and Additional Grievance of 13th March 2026, raising the fifth grievance now considered.

Since the fifth grievance, if upheld, is dispositive of the composition of the Evaluation Committee and, on the authority discussed below, requires the evaluation of all bids to be conducted afresh, the Board deals with it first, before turning to the Appellant's first four grievances.

Grievance 5: Irregular Composition of the Evaluation Committee

- The Appellant contends that Mr Ryan Cefai Mercieca could not properly form part of the Evaluation Committee for this tender, by reason of a conflict of interest arising from his position as Contracts Manager to the Council and from his commercial dealings with an economic operator active in the same sector, and that the composition of the Committee was consequently irregular and the evaluation vitiated.
- Testifying at the sitting of the 14th April 2026, Mr Ryan Cefai Mercieca confirmed on oath that he was asked by the Council Secretary, between September and October 2025, to join the Evaluation Committee for this tender. He is not an employee of the Council, but holds a separate tender as Contracts Manager, in the name of his own company, Yama Yami Limited. In that role, his duty was to check that Mr Twanny Barun, of Malta Recycle & Waste Collection Limited, honoured his commitments under a previous tender for the same bulky refuse service. About three years earlier, Mr Cefai Mercieca had been a shareholder in M.J. Limited, which had entered into an agreement with Mr Barun's company for the hire of vehicles in the Hal Balzan locality. That agreement never materialised. He did not exclude that the vehicles could be used for bulky refuse services and confirmed he had not disclosed the agreement to the Council or the Committee. He further confirmed that, at the evaluation meeting, he stated that Malta Recycle, which had submitted the cheapest bid, had previously provided an unsatisfactory service; that he reported Mr Barun to the police during the evaluation period and informed the Committee; that Malta Recycle's bid was then disqualified, on legal advice; and that he would have resigned from the Committee had he been asked to do so.
- That account is corroborated, and its adverse character confirmed, by the record of Case 2222, at which the Appellant was present as Interested Party. Mr Barun, testifying there as a witness summoned by the Contracting Authority, gave evidence of an active dispute with Mr Cefai Mercieca over the use of Malta Recycle's Euro 5 and Euro 6 vehicles in tenders submitted in Gozo, including a tender at the Xaghra Local Council which, on his evidence, was successfully challenged on appeal because those vehicles were not Mr Cefai Mercieca's, a fact which Mr Cefai Mercieca admitted. Mr Barun testified that his sole purpose in calling Mr Cefai Mercieca was to tell him, "*tibqax twaddab it-tenders Għawdex bil-vetturi tiegħi*," and denied ever threatening him. Dr Angelo Micallef, Chairperson of the Evaluation Committee,

testified in the same proceedings that the Committee had no evidence beyond Mr Cefai Mercieca's police report and relied entirely upon it, and that it had heard one bell only.

- Ms Doriette Farrugia, Secretary to the Local Council, testified at the sitting of the 14th April 2026 that the contract with Yama Yami Limited provides that it may form part of an evaluation committee, and, on further questioning, that the company's involvement extended also to the period before the award of a tender.
- Ms Farrugia had earlier testified, at the sitting of the 3rd March 2026, that the Committee's conflict-of-interest declarations were held in the system and showed that none of its members had a conflict of interest.
- Regulation 2 of the Public Procurement Regulations (S.L. 601.03) defines "*conflicts of interest*" as any situation where a person involved in the conduct of the procurement procedure has, directly or indirectly, "*a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.*" Regulation 194(b) bars the award of a contract to an economic operator subject to such a conflict, unless it can be effectively remedied by less intrusive measures; regulation 16(1)(g) duties the Contracting Authority to prevent, identify and remedy conflicts of interest so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.
- Mr Cefai Mercieca's position engaged that definition. He held, through his own company, a contract with the Contracting Authority under which he supervised contractors delivering the very service now being tendered. He had an undisclosed prior commercial dealing with the sole director of one competing bidder, and was, at the material time, in an active and adverse dispute with him. He had formed and expressed an adverse view of that bidder's past performance to the Committee. He then became, during the evaluation period, the complainant whose report was the sole basis on which that bidder was excluded. Each of these was, at the least, capable of being perceived as compromising his impartiality.
- The Contracting Authority answers that this rests on assumption, that mere acquaintance is not a conflict, that the Committee acted collectively, and that no bias in Mr Barun's favour can be inferred given that it was Mr Cefai Mercieca who reported him and Malta Recycle was in fact disqualified. The Board does not accept these submissions:
 - What is established is not acquaintance, but an undisclosed prior commercial dealing, a subsisting supervisory relationship, an expressed adverse operational opinion, an active dispute over that bidder's vehicles, and a police report filed during the evaluation, all concerning the same bidder.
 - Regulation 2 does not distinguish an interest favourable to a bidder from one adverse to it. An evaluator's antagonism towards a competitor compromises the exercise as surely as partiality towards one, and the definition is satisfied by an interest which "*might be perceived*" to

compromise impartiality. That Mr Cefai Mercieca acted against Mr Barun demonstrates the interest; it does not negative it.

- Acting collectively does not cure the defect. On the Chairperson's own evidence in Case 2222, the Committee did not investigate this matter independently: it relied entirely on Mr Cefai Mercieca's report. Where the sole evidence behind a decision comes from the one member with the undisclosed interest, that member's conflict taints the decision, whatever the formal vote.
 - The submission that no influence could bridge a price gap of €52,100 assumes the field of competitors was fixed. It was not: the cheapest bidder was removed from that field by a decision taken on the conflicted evaluator's own report. The price gap is a product of the process complained of, and cannot justify it.
- The objective character of this test is confirmed by the case law relied upon. In *MTR Contracting Limited vs Direttur tal-Kuntratti et* (Court of Appeal, Superior Jurisdiction, 28th June 2013), the Court held that *"l-apparenza ta' serjeta' hija kważi importanti daqs li jkun hemm fil-fatt dik is-serjeta' fl-istharrig tal-offerti."* In *Ismeri Europa Srl vs Court of Auditors of the European Communities* (Case T-277/97, confirmed on appeal in Case C-315/99 P), the European courts held that a conflict of interest *"constitutes, objectively and in itself, a serious irregularity without there being any need to qualify it by having regard to the intentions of the parties concerned and whether they were acting in good or bad faith, or to establish that it caused quantifiable material injury."* The Board makes no finding, and needs to make none, as to whether Mr Cefai Mercieca in fact acted partially: the irregularity lies in his having sat at all, and in the failure of the mechanism regulation 16(1)(g) requires, to identify and remedy that position before he did.
 - Tender evaluation is a collective exercise requiring the independent, impartial judgment of every member of the Committee. Where one member could not properly sit, the exercise as a whole cannot stand, and no bidder, the Appellant included, can be said to have had its offer assessed by a properly constituted Committee.
 - In light of all the above, the Board finds that Ms Farrugia's testimony that the declarations held in the system showed no conflict of interest does not displace the objective circumstances from which a conflict of interest, or at least the appearance of one, arose.
 - Therefore, the Board upholds the Appellant's fifth grievance, and finds that the Evaluation Committee for tender BLC04/2025 included a member who, in the circumstances, could not properly form part of it, and that the evaluation conducted by that Committee is consequently vitiated.

Grievances 1, 2, 3 and 4: Failure to Provide Information / Non-Compliance / Other Irregularities / Appellant's Own Compliance

- The finding on the fifth grievance requires the evaluation of all bids to begin again before a newly constituted Evaluation Committee. The Board does not, therefore, proceed to determine the Appellant's remaining grievances.
- The Board follows, on this point, *Simply Clean Limited vs Dipartiment tal-Kuntratti, Kummissarju tal-Pulizija u AGV HR Management Ltd* (Rikors numru 34/2026/1, 30th April 2026), rather than *Support Services Limited vs Agenzija Sapport et* (Appell numru 191/2023/1, 12th July 2023) taken on its own. *Simply Clean* is the later judgment, and it is the one that speaks directly to the situation here, namely what the Board should do with the remaining grievances once an evaluation is found tainted by a conflict of interest and a fresh evaluation ordered.
- At paragraph 15, the Court in *Simply Clean* explained that the single-final-decision requirement means only that the Board's judgment must bring the proceedings on that letter of objection to a close, not that every grievance must be decided once one is found well founded. *Support Services* itself had put it this way, at paragraph 20: *"Minn kif taraba din il-Qorti, ladarba l-liġi tispeċifika terminu qasir hafna li fih il-Bord ta' Reviżjoni għandu jagħti s-sentenza tiegħu, allura l-Bord ma jistax jaqbad u jiddeċiedi li jisma' u jiddeċiedi biss punt preliminari tal-appell. Mod iehor, il-Bord għandu d-dmir li jisma' l-appell fuq kollox u jagħti sentenza waħda finali."*
- At paragraph 18, the Court in *Simply Clean* identified this case's very situation as calling for restraint: where accepting one grievance means every decision of the evaluation committee falls away and the evaluation must begin again, as where the committee included members who at law could not sit on it, citing *Hitachi Zosen Inova AG, Terna S.A. vs Dipartiment tal-Kuntratti* (20th June 2024). At paragraph 19, the Board and the Court alike *"għandhom joqogħdu lura milli jidhlu fil-kwistjonijiet dwar jekk il-kumitat tal-għażla jkunx iddeċieda tajjeb jew le,"* since it is for the newly appointed committee to consider the offers afresh; and, at paragraph 20, it makes no sense to influence that committee before it has begun its work.

Given that the evaluation must begin again before a differently constituted Evaluation Committee, the Board determines that the Appellant's first, second, third and fourth grievances are premature and cannot be definitively adjudicated at this juncture. Those questions are left undecided and unprejudiced (*impregudikati*), 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) Upholds the Appellant's fifth grievance, and finds that the Evaluation Committee for tender BLC04/2025 included a member who, in the circumstances, could not properly form part of it, and that the evaluation conducted by that Committee is consequently vitiated;
- b) Determines that the Appellant's first, second, third and fourth grievances are premature and cannot be definitively adjudicated at this juncture, and leaves them undecided and unprejudiced (*imprejudikati*), in accordance with *Simply Clean Limited vs Dipartiment tal-Kuntratti et* (Rikors numru 34/2026/1, 30th April 2026);
- c) Revokes the Tender Decision Notice of the 2nd December 2025 and the letters to the successful and unsuccessful bidders of the same date;
- d) Orders the Hal Balzan Local Council to re-evaluate all bids submitted under tender BLC04/2025 by a newly constituted Evaluation Committee, none of whose members took part in the original evaluation, which shall:
 - conduct the evaluation without reliance upon the report of, or upon any assessment made by, Mr Ryan Cefai Mercieca;
 - determine afresh the administrative, technical and financial compliance of every offer, including that of the Appellant and that of the Recommended Bidder, on the basis of the tender document as published;
 - observe the duty under regulation 16(1)(g) of the Public Procurement Regulations to prevent, identify and remedy conflicts of interest, obtaining fresh declarations of conflict of interest from every member before commencing its work;
- e) Directs that bidders be requested to extend the validity of their bids if required, and that the Contracting Authority do anything else which is conducive and necessary for the proper execution of the above orders;
- 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