

Public Contracts Review Board
Notre Dame Ravelin
Floriana
Malta



Today, 8 October 2026

To the Secretary,

I am writing to you directly on behalf of our client, the Msida Local Council, of 2, St Louis Street, Msida, with reference to the objection concerning the tender entitled “Collection of Bulk Refuse from the Locality of Msida using Low Emission Transport”, bearing reference KLMsd/TDR/01/2026.

At the outset, the Contracting Council categorically rejects any and all allegations raised in the appeal filed by the appellant company, Simply Clean Limited, bearing company registration number C 101719, as being unfounded both in fact and in law. With reference to the first objection raised by the appellant company, namely that the Contracting Council allegedly failed to provide reasons as to why the appellant was not selected, the Council submits that the wording of the law is unequivocal in this regard, providing in black and white that: *“The communication to each tenderer or candidate concerned of the proposed award or of the cancellation of the call for tenders shall be accompanied by a summary of the relevant reasons relating to the rejection of the tender as set out in regulation 242...”* Accordingly, the appellant company is incorrect in asserting in its appeal that regulation 272 of Subsidiary Legislation 601.03, partially reproduced above, requires that *“the notice of award must be accompanied by a summary of the reasons...”* It is a well-established principle in legal interpretation and domestic jurisprudence that the terms “shall” and “must” carry different legal meanings and cannot necessarily be regarded as synonymous in every legislative context.



Notwithstanding the foregoing, and irrespective of the distinction between the terms “shall” and “must” in legislation, the Council nevertheless did provide a summary of the reasons underlying its decision. Indeed, the appellant company itself quoted

the relevant reason in its appeal, namely: “The criteria for award was the cheapest offer which was compliant with the administrative and technical requirements of the tender requisites.” With due respect, and in view of the foregoing, the appellant company's argument is therefore devoid of merit.

With regard to the second objection raised by the appellant company, namely that Agribands Limited (C 98314) is allegedly not authorised, by virtue of its Memorandum and Articles of Association, to perform the services forming the subject matter of the call for tenders, the Council submits that this allegation is founded upon an unduly restrictive and artificial interpretation of the company's Objects Clause. Indeed, when the Memorandum in question is read in its entirety, it is clear that the company has, amongst its objects, the power to “outsource, subcontract and provide skilled and unskilled employees to perform task or duties and service to any individual or business in any industry.” Accordingly, the company's corporate objects are not restricted to any particular activity or industry but expressly extend to the provision of employees and the performance of tasks, duties and services for any individual or business, irrespective of the industry or sector in which they operate. It cannot therefore be validly maintained, as the appellant company seeks to contend, that merely because the words “collection of bulk refuse” do not appear verbatim amongst the company's objects, the company is *ipso facto* incapable of performing the services in question.

This principle was clearly affirmed by the Court of Appeal in *X Clean Limited v. Department of Contracts et, Application No. 314/2025/1*, wherein the Court emphasised that, at the tender evaluation stage, a contracting authority must refrain



from rejecting a bid on grounds which are not provided for in the tender documents, and that bids are to be evaluated on the basis of the conditions and requirements actually established in those documents. Accordingly, in the absence of any express requirement that a tenderer be required to have, amongst its corporate objects, a specific activity relating to the collection of bulk refuse, it cannot validly be

maintained that the successful tenderer ought to have been disqualified on such basis.

In view of the foregoing, and whilst reserving the right to produce such evidence as may be necessary and permissible at law, the Contracting Council respectfully requests that this Board dismiss the appeal filed by Simply Clean Limited and, instead, confirm *in toto* the decision of the Evaluation Committee whereby Agribands Limited (C 98314) was recommended for the award of the tender in question.

Such is respectfully submitted for the consideration and determination of this Honourable Board.

Avv. Ryan Ellul