DALLIPARIS
ADVOCATES



18th November 2026

Public Contracts Review Board
Notre Dame Ravelin,
Floriana,
Malta

In the acts of Objection in the names of:

Simply Clean Limited

vs

[i] Legal Aid Malta Agency
[ii] Department of Contracts
[iii] AGV HR Management Limited

SPD5/2026/022

Tender Name: Framework Contract for the Provision of Cleaning Services with Reduced Environmental Impact for Legal Aid Malta Agency

---

REASONED REPLY

Whereas, the Department of Contracts, Sectoral Procurement Directorate, acting for and on behalf of the Legal Aid Malta Agency (hereinafter "the Contracting Authority"), issued a call for tenders "Framework Contract for the Provision of Cleaning Services with Reduced Environmental Impact for Legal Aid Malta Agency", Tender Reference SPD5/2026/022;

Whereas, AGVHR Management (hereinafter the "Recommended Bidder") submitted an offer for this procurement procedure, which bid was recommended for award as the offer with the Best Price Quality Ratio (BPQR);

Whereas, by virtue of a letter dated 9th November 2026, Simply Clean Limited (hereinafter the "appellant" or "Simply Clean") was informed that its offer had failed to satisfy the criterion for award;

Whereas, Simply Clean submitted a reasoned objection dated 14th November 2026;

Whereas, the Recommended Bidder, in accordance with regulation 276(c) of S.L. 601.03, is submitting its written reply to the appeal by Simply Clean, as follows:

Preliminary

i. By virtue of this preliminary observation, the Recommended Bidder hereby submits that it has no visibility whatsoever of the tender offer submitted by Simply Clean, and thereby it does not have, and cannot be expected to have, the capacity to confirm or otherwise the factual assertions being made by Simply Clean in its letter of objection, including, without limitation, the contents, precise wording, and date of the Collective Agreement and of the DIER letter which Simply Clean exhibits and relies upon in support of both of its grounds. Any such assertions, insofar as they are not independently verifiable by reference to the Procurement Document and the evaluation record, are accordingly not admitted, and remain entirely a matter for Simply Clean to prove to the satisfaction of this Honourable Board.

ii. It is further submitted, with respect, that the letter of objection does not engage with the decision actually taken in this procurement procedure. The objection reproduces, almost verbatim, the objection filed by Simply Clean in respect of a different tender, namely SPD8/2026/042 (Framework Contract for the Provision of Environmentally Friendly Cleaning Services at Ambjent Malta), and in so doing describes an evaluation which did not take place in the present procedure. In particular, the objection asserts that the Evaluation Committee "did not score the appellant's submission under limb (iii)" and that it proceeded "on the footing that the collective agreement is valid". The evaluation record shows the opposite: Simply Clean was awarded 65% under sub-criterion C.2 vii, with the express justification that "an identical copy of an expired (i.e. Validity Period exceed the demarcated 90-day period as per above definition) Collective Agreement duly signed by the involved parties and submitted by the Economic Operator to DIER was provided", that is, the wording of limb (iii). The objection equally refers throughout to "sub-criterion C2(v)", when the sub-criterion under which Simply Clean was scored is C.2 vii, and describes the difference between the parties as "a single point lost", when Simply Clean was in fact awarded 65% as against the 100% awarded to the Recommended Bidder. The Recommended Bidder respectfully submits that the objection is to be assessed against the decision actually taken by the Evaluation Committee, and not against the decision which Simply Clean describes.

iii. It is submitted that the burden of proving an objection of this nature lies squarely on the party raising it. It falls upon Simply Clean, and Simply Clean alone, to demonstrate to the satisfaction of the Board that the documentation it submitted with its tender met, in every material respect, the specific and cumulative wording of limb (v) of sub-criterion C.2 vii of the evaluation grid, namely that it constituted "an identical copy of a valid Collective Agreement duly signed by the involved parties and submitted by the Economic Operator to DIER including the acknowledgement by DIER that the

Collective Agreement has been submitted for registration at their end", and, before that, that the Collective Agreement was "valid" within the meaning expressly assigned to that term by the Procurement Document. The Recommended Bidder reserves its full right to inspect and test that documentation, and Simply Clean's characterisation of it, should the same be exhibited before the Board.

iv. It is further submitted that the wording of sub-criterion C.2 vii, including the definition of a "valid" Collective Agreement and the graduated scale of points under limbs (i) to (v), was fixed in the Procurement Document at tender stage, and was equally available to, and unchallenged by, every economic operator, including Simply Clean, prior to the submission deadline. The Procurement Document allowed economic operators to request additional information until the 27th May 2026 (Section 2, Timetable). Simply Clean neither sought a clarification nor availed itself of the pre-contractual remedy under regulation 262 of S.L. 601.03 in respect of that wording. The Evaluation Committee's application of that undisputed wording to the documentation actually before it at evaluation stage is accordingly a technical, evaluative judgment falling within the discretion afforded to the Contracting Authority, which this Honourable Board should not lightly substitute absent a manifest and demonstrated error.

v. It is further and separately observed that Simply Clean's request that the Board "order the contracting authority to award the appellant the full 6 points (100%)" trespasses upon the exclusive technical competence of the Evaluation Committee and falls outside the competence of this Honourable Board. The Board's function is to review the lawfulness and regularity of the procurement process; it is not for the Board to step into the shoes of the Evaluation Committee and itself assign a score. Should the Board find in Simply Clean's favour on the merits, the appropriate remedy would be to annul the impugned decision and order the Contracting Authority to re-evaluate, not to direct the specific outcome of that re-evaluation.

<u>On the First Ground: Validity of the Collective Agreement</u>

1. Without prejudice to the Preliminary above, the Recommended Bidder submits that the First Ground is unfounded. The question is not whether, as a matter of employment law, the terms of Simply Clean's Collective Agreement continue to regulate the relationship between Simply Clean and its employees. The question is whether that Collective Agreement was "valid" within the meaning which the Procurement Document itself expressly attributes to that term for the purpose of allocating points under sub-criterion C.2 vii.

2. The Procurement Document does not leave the notion of validity open to interpretation. At sub-criterion C.2 vii of the evaluation grid (pages 10 and 11 of the

Procurement Document), it provides that "Wherever there is a reference to 'valid' in the wording below, it shall be construed as follows: Validity of the Collective Agreement is deemed as having an expiry date that shall at least be for 90 days from the Submission Deadline of the Procurement Call." Limb (iii), in turn, describes an "expired" Collective Agreement as one whose "Validity Period exceed the demarcated 90 day period as per above definition". The test is therefore an objective one, determined by reference to the expiry date of the Collective Agreement as submitted, measured against the submission deadline.

3. On Simply Clean's own pleading, Article 4 of its Collective Agreement provides that the agreement "shall remain in force until 14th February 2026". The Deadline for Submission of Tenders in the present call was the 9th June 2026 at 09:30hrs (Section 2, Timetable, of the Procurement Document). For the Collective Agreement to be "valid", it therefore had to carry an expiry date falling on or after the 7th September 2026. Its expiry date fell almost four months before the submission deadline, let alone 90 days after it. The DIER letter quoted by Simply Clean itself describes the agreement as "covering period 15/02/23 - 12/02/26".

4. The provision upon which Simply Clean relies does not furnish an expiry date; it does the very opposite. It provides that, on the lapse of the agreed term and pending negotiations, "the contents of this agreement shall remain in force", and, in the absence of notice, that those contents shall remain in force "for an indefinite period". A provision which keeps the contents of an agreement in force indefinitely, pending its renewal, is by definition not an expiry date falling at least 90 days after the submission deadline. It is, rather, the mechanism by which the parties bridge the period after the agreed term has come to an end.

5. Provisions of this kind are commonplace in collective agreements registered in Malta. Were Simply Clean's interpretation to be accepted, practically no collective agreement would ever be "expired" for the purposes of sub-criterion C.2 vii, and limb (iii) of the sub-criterion would be deprived of any practical effect. It is a basic principle of interpretation that every provision of a document is to be given a meaning which allows it to operate, rather than one which renders it redundant. The Contracting Authority deliberately drew a distinction, carrying a difference in points, between a Collective Agreement whose agreed term was current at the relevant date and one whose agreed term had lapsed. That distinction is consistent with the declared purpose of the sub-criterion, namely to allocate additional points "to bidders who put a tangible effort in pursuing good conditions of employment", which effort is reflected in the conclusion and renewal of collective agreements within their agreed terms.

6. The Contracting Authority, and this Honourable Board in reviewing its decision, are bound by the terms of the Procurement Document as published, in line with the principles of self-limitation, equal treatment and transparency. Every economic operator prepared its submission on the basis of the same definition of validity. To award Simply Clean the points reserved for a "valid" Collective Agreement on the strength of a survival clause, notwithstanding an expiry date which had already passed by the submission deadline, would be to apply to Simply Clean a definition of validity different from that published in the Procurement Document and applied to all other tenderers. Had Simply Clean considered that definition unclear or inappropriate, its remedy lay in seeking a clarification or in filing a pre-contractual remedy before the submission deadline, and not in seeking to rewrite the definition at evaluation stage.

7. As to the decision of this Honourable Board in Case 1939 (SPD7/2023/028, JF Services Ltd v Ministry for the Economy, European Funds and Lands), the Recommended Bidder respectfully submits that, without prejudice to the principle that decisions of this Board are delivered in the light of the specific facts and procurement documents of each case and are not binding in subsequent procedures, that decision is to be read in the light of the wording of the procurement document under consideration in that case. In the present procedure, the Procurement Document expressly makes the expiry date, and therefore the "time frame" of the agreement, the very test of validity. The observation that "an expired 'time frame' does not implicitly mean an expired collective agreement" cannot override an express contractual definition which turns precisely on that expiry date.

8. It follows that the Evaluation Committee correctly applied the definition contained in the Procurement Document, and correctly scored Simply Clean's submission under limb (iii) of sub-criterion C.2 vii.

<u>On the Second Ground: Limb (v) of Sub-Criterion C.2 vii</u>

9. The Second Ground is expressly premised on "taking the evaluation committee's own approach to validity at face value", on the assertion that the Evaluation Committee proceeded on the footing that the Collective Agreement was valid. As shown in the Preliminary above, that premise is incorrect. The Evaluation Committee found the Collective Agreement to be expired. The Second Ground therefore stands or falls with the First Ground.

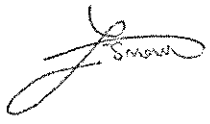
10. Limb (v) of sub-criterion C.2 vii is cumulative. It requires "an identical copy of a valid Collective Agreement" and, in addition, "the acknowledgement by DIER that the Collective Agreement has been submitted for registration at their end". Limb (v) builds upon limb (iv), which equally requires a valid Collective Agreement; it does not build

upon limb (iii). The DIER acknowledgement is an additional requirement, not a substitute for validity. A DIER acknowledgement, however worded, cannot render valid a Collective Agreement whose expiry date fell before the submission deadline, and cannot lift a submission falling under limb (iii) into limb (v).

11. Far from assisting Simply Clean, the DIER letter, as quoted in the letter of objection, confirms the registration of an agreement "covering period 15/02/23 - 12/02/26", that is, a defined period which had already come to an end by the submission deadline. The Recommended Bidder further notes that the end date of that period, as quoted, does not correspond to the date of 14th February 2026 stated in Article 4 of the Collective Agreement, also as quoted. Without visibility of either document, the Recommended Bidder reserves its position on this discrepancy, and on whether the documentation submitted constitutes an "identical copy" as required by the Procurement Document, which remains a matter for Simply Clean to prove.

12. In any event, and as stated in the Preliminary above, the Recommended Bidder has no visibility of, and cannot confirm or deny, the contents of Simply Clean's Collective Agreement or of the DIER letter relied upon, whether as to its wording, its date, or Simply Clean's characterisation of it, or whether such letter was in fact submitted with Simply Clean's tender. The Recommended Bidder notes in this respect that the Technical Offer is subject to Note 3 to Clause 5 of the Instructions to Tenderers, in terms of which "No rectification shall be allowed. Only clarifications on the submitted information may be requested." Any document which did not form part of Simply Clean's Technical Offer as submitted by the deadline cannot, at this stage, be introduced to improve its score.

NOW THEREFORE, whilst reserving the right to put forward further submissions, the Recommended Bidder hereby requests this Honourable Board to reject the appeal by Simply Clean Limited and to confirm the decision of the Contracting Authority.



Dr Zackariah Esmail
zack@dalliparis.com