

26<sup>th</sup> November 2021

The Secretary  
Public Contracts Review Board  
Notre Dame Ravelin  
Floriana



Dear Sir,

**Appeal by Galea Cleaning Solutions JV: Tender for the Collection of Household Waste from the Locality of Il-Hamrun in an Environmentally Friendly Manner (KLH/TDR/05/2021)**

I write on behalf of Galea Cleaning Solutions JV (the "Appellant") in relation to the tender in caption, for the purposes of raising an objection in terms of applicable legislation.

**1. The Tender Document**

Earlier in 2021, the Hamrun Local Council (the "Contracting Authority") issued the tender document in caption (the "Tender Document") (the Tender Dossier is included with this objection as document GCS 1).

Prior to the closing date, the Appellant submitted a tender offer in accordance with the Tender Document. As part of its tender submission, the Appellant submitted the financial document offer attached hereto as GCS 2.

By means of a letter dated 19<sup>th</sup> November 2021 (the "Cancellation Letter") (attached hereto as document GGCS 3), the Contracting Authority informed the Appellant that its offer was not being accepted and that the Tender was being cancelled. The letter stated that:

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Paphos	paphos@kyprianou.com	* +357 26 930800
Athens	athens@kyprianou.com	* +30 210 3387060
Thessaloniki	thessaloniki@kyprianou.com	* +30 231 0299953
Kiev	kiev@kyprianou.com	* +380 63 2510042
Dubai	dubai@kyprianou.com	* +971 4 5570061
London	london@kyprianou.com	* +44 20 76920777

*"Thank you for participating in the above-mentioned procurement procedure. However, this Local Council regrets to inform you that the procurement proposal submitted by your company was financially not compliant.*

*The amount submitted, that of € 505,440.00, exceeded the estimated cost of the tender.*

*The Evaluation Committee has recommended that this tender is not awarded due to financial noncompliance and this tender has to be cancelled as per clause 18.3 (a) of the General Governing Tenders, which states: "18.3 Cancellation may occur where: (a)The tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all".*

The Appellant is submitting a payment of Euro 537 with this appeal as required by the Public Procurement Regulations ("PPRs").

## 2. Background

The Contracting Authority issued the Tender for the purposes of procuring certain services which are required for what is an essential purpose, i.e. the collection of household waste from the locality of Hamrun. This is a service which the Contracting Authority, for self-evident reasons, must procure. The type of waste to be collected in terms of the Tender Document was organic waste (white bag), mixed waste (black bag) and recyclable waste (grey back).

The Tender document stated (see clause 1.2 of the Instructions to Tenderers, clause 18.2 of the Special Conditions, and clause 5.2 of the Terms of Reference) that the service being procured was for **one year**, with the possibility of further monthly or yearly extensions. Clause 1.3 of the Instructions to Tenderers in the Tender Document provides the following:

*"The Estimated Procurement Value for this Call for Tenders has been based on comprehensive research including appropriate financial analysis. In the context*

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*of this procurement, the Estimated Procurement Value, based on market research, is that of €107,399.24 excluding VAT."*

The Appellant requested the Contracting Authority to provide further information on the "comprehensive research including appropriate financial analysis" which was carried out, however by the time this appeal was filed the said information was not provided (see Doc GCS 4).

### 3. Basis for Appeal

Regulation 270 of the PPRs allows a tenderer to appeal against the cancellation of a Tender.

The Appellant submits that the decision of the Contracting Authority to cancel the Tender was incorrect for a number of reasons.

#### There is no alternative to the Service

As is stated above, the service to be procured by the Contracting Authority is an essential service which must be procured by the Contracting Authority. In other words, even if the Contracting Authority cancels the current Tender process, it has no option other than to issue another Tender which will be substantially identical to the current Tender – waste in the locality of Hamrun must be collected. In effect, therefore, the cancellation of this Tender process will serve only to prejudice bidders that have submitted an offer in this Tender process without accruing any real benefit to the Contracting Authority.

#### Incorrect Evaluation of Financial Offer

The Appellant submitted an offer for a total of Euro 505,440 in accordance with the document attached to this letter as GCS 2. However, it should be beyond any doubt that the said offer is for the provision of services for a period of two years, and not one year as was required by the Tender Document. For the benefit of the Board, it should be clarified that the document attached as GCS 2 is a document which is provided to prospective bidders by the Contracting Authority and, therefore, bidders have no

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option other than to fill in and submit the document provided by the Contracting Authority, regardless of whether or not it reflects what is requested in the Tender Document. Any other course of action would open a bidder to the risk of disqualification for incomplete submission of financial information.

It should be clear therefore that in so far as the Contracting Authority assessed the Appellant's bid to be for Euro 505,440, and in so far as the Contracting Authority reached its decision on this basis, the Contracting Authority's decision was incorrect.

#### **4. Conclusion**

The Appellant humbly requests the Board:

- a. To declare that the decision of the Contracting Authority is null and void; and
- b. To order the Contracting Authority to proceed with the evaluation of tenders submitted in this Tender Process.

The Appellant reserves the right to submit further arguments in support of its objection during the hearing.

The Appellant requests that the evaluation Board and the Executive Secretary be present for the hearing.

Yours Sincerely



Dr. Adrian Mallia

[adrian.mallia@kyprianou.com](mailto:adrian.mallia@kyprianou.com)

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London	<a href="mailto:london@kyprianou.com">london@kyprianou.com</a>	+44 20 76920777

**BOV**

Bank of Valletta

LABOUR AVENUE, NAXXAR, NXR9020

22-633

Date:

26/11/21

Bank of Valletta p.l.c., Malta

Pay Public Contracts Review Board only

Five hundred and thirty

seven Euro Only -

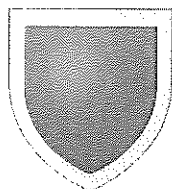
€ 537 -

MR. CHRISTIAN GALEA A/C WAGES

*C. Galea*

Please do not write or mark below this line.

⑈000029⑈ 22⑈633⑈ 50063486454⑈



**HAMRUN LOCAL COUNCIL**  
Address: Duke of Edinburgh Street, Hamrun HMR2063  
Telephone: +356 21222020  
Email: [hamrun.lc@gov.mt](mailto:hamrun.lc@gov.mt)

19<sup>th</sup> November, 2021

**Dr Adrian Mallia**  
**Galea Cleaning Solutions JV**  
**AMJ Legal Office 3 Susan Court**  
**Triq il-Prinjolata**  
**Ta Xbiex**  
**Malta**  
**Tender ID: 000164255**

**TENDER REFERENCE: KLH/TDR/05/2021**

**SUBJECT: LETTER TO UNSUCCESSFUL BIDDER: TENDER FOR THE  
COLLECTION OF HOUSEHOLD WASTE FROM THE LOCALITY OF IL-  
HAMRUN, IN AN ENVIRONMENTALLY FRIENDLY MANNER**

Dear Sir,

Thank you for participating in the above-mentioned procurement procedure. However, this Local Council regrets to inform you that the procurement proposal submitted by your company was financially not compliant.

*The amount submitted, that of € 505,440.00, exceeded the estimated cost of the tender.*

The Evaluation Committee has recommended that this tender is not awarded due to financial noncompliance and this tender has to be cancelled as per clause 18.3 (a) of the General Governing Tenders, which states: "18.3 Cancellation may occur where: (a) The tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all".

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged at the Public Contracts Review Board, Notre Dame Ditch, Floriana by Monday 29<sup>th</sup> November, 2021 against a deposit as requested in Regulation 273 of LN 352/2016.

The official 'recommendation for award' schedule can be accessed on the website: [www.etenders.gov.mt](http://www.etenders.gov.mt).

Although this Local Council has not been able to make use of your services on this occasion, we trust that you will continue to take an active interest in its procurement opportunities.

Yours sincerely,

**SIGNED**  
**Daniel Bugeja**  
**Executive Secretary**

## Adrian Mallia

---

**From:** Bugeja Daniel at Local Councils <daniel.c.bugeja@gov.mt>  
**Sent:** 25 November 2021 12:04  
**To:** Adrian Mallia  
**Subject:** RE: TENDER REFERENCE: KLH/TDR/05/2021 - Urgent

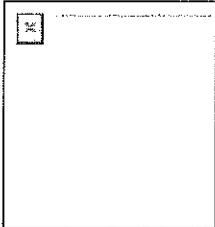
Dear,

Although the Local Council is not obliged to issue this information, I would like to inform you that we worked the costing on the current contract in place.

Kind regards,

**Daniel Bugeja**  
Executive Secretary

Kunsill Lokali Hamrun  
Triq id-Duka ta' Edinburgh  
Hamrun FMR 2063  
Tel: 21 222 020  
Direct: 27 790 732  
[hamrun.lc@gov.mt](mailto:hamrun.lc@gov.mt)  
[Facebook Page](#)



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**From:** Adrian Mallia <Adrian.Mallia@kyprianou.com>  
**Sent:** Thursday, November 25, 2021 10:22 AM  
**To:** Bugeja Daniel at Local Councils <daniel.c.bugeja@gov.mt>  
**Subject:** RE: TENDER REFERENCE: KLH/TDR/05/2021 - Urgent  
**Importance:** High

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Dear Mr Bugeja

I have not received this information. This information should be readily available to you and therefore I cannot understand the delay. Please appreciate that there is a deadline which applies here and therefore this delay is prejudicing my client's right to appeal. If the information that I asked for does not exist, I would much rather you told me, so I may direct my client accordingly.

Regards  
Adrian

Dr. Adrian Mallia | Partner  
MICHAEL KYPRIANOU – ADVOCATES & LEGAL CONSULTANTS



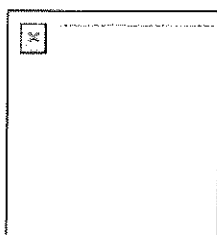
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**From:** Bugeja Daniel at Local Councils <[daniel.c.bugeja@gov.mt](mailto:daniel.c.bugeja@gov.mt)>  
**Sent:** 24 November 2021 11:12  
**To:** Adrian Mallia <[Adrian.Mallia@kyprianou.com](mailto:Adrian.Mallia@kyprianou.com)>  
**Subject:** RE: TENDER REFERENCE: KLH/TDR/05/2021 - Urgent

Noted

Will get back to you accordingly.

**Daniel Bugeja**  
Executive Secretary



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**From:** Adrian Mallia <[Adrian.Mallia@kyprianou.com](mailto:Adrian.Mallia@kyprianou.com)>  
**Sent:** Wednesday, November 24, 2021 10:56 AM  
**To:** Bugeja Daniel at Local Councils <[daniel.c.bugeja@gov.mt](mailto:daniel.c.bugeja@gov.mt)>  
**Subject:** TENDER REFERENCE: KLH/TDR/05/2021 - Urgent  
**Importance:** High

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Dear Mr Bugeja

I write on behalf of Galea Cleaning Solutions JV in relation to the Tender in caption and the documents attached. I refer in particular to clause 1.3 of the Tender Document which provides the following:



*"The Estimated Procurement Value for this Call for Tenders has been based on comprehensive research including appropriate financial analysis. In the context of this procurement, the Estimated Procurement Value, based on market research, is that of €107,399.24 excluding VAT."*

I kindly ask you to provide the research and analysis referred to in this clause. Kindly provide this information urgently and in no event later than close of business today, as my client is considering whether to file an appeal against this cancellation, and as you know the deadline for this is on Monday.

Kind Regards  
Adrian Mallia

Dr. Adrian Mallia | Partner

MICHAEL KYPRIANOU – ADVOCATES & LEGAL CONSULTANTS

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NICOSIA | LIMASSOL | PAPHOS | ATHENS | THESSALONIKI | BIRKIRKARA (MALTA) | KIEV | DUBAI | LONDON



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## S6 - Financial Bid Form

### SERVICE TENDER FOR THE COLLECTION OF HOUSEHOLD WASTE FROM THE LOCALITY OF HAMRUN USING LOW EMISSION VEHICLES

Item	Description	Daily Rates *	Collections **	Totals
<b>Year 2021</b>				
1.1	Rate for waste collection (s) per day * with waste delivered to Malta North Facility	€ 810.00	156	€ 126,360.00
1.2	Rate for waste collection (s) per day * with waste delivered to Sant'Antnin Waste Treatment Plant, Marsascala	€ 810.00	156	€ 126,360.00
1.3	Emptying of Bins (Optional Service)	€ 130.00		€ -
<b>Year 2022</b>				
1.1	Rate for waste collection (s) per day * with waste delivered to Malta North Facility	€ 810.00	156	€ 126,360.00
1.2	Rate for waste collection (s) per day * with waste delivered to Sant'Antnin Waste Treatment Plant, Marsascala	€ 810.00	156	€ 126,360.00
1.3	Emptying of Bins (Optional Service)	€ 130.00		€ -
<b>GRAND TOTAL - TO BE CARRIED FORWARD TO THE FINANCIAL SECTION OF THE ONLINE TENDER RESPONSE</b>				<b>€ 505,440.00</b>

\* Rate includes all fees and charges excluding VAT and disposal fees (which shall be invoiced directly by the authorized facility to the Local Council on a monthly basis).

\*\* Frequency is indicative. The Council reserves the right to increase / decrease the services as deemed necessary, using the rates as submitted in the Bill of Quantities.

\*\*\*Year 2022 shall be performed only if contract is extended.

\*\*\*\* Emptying of bins shall be done only if and when requested, and will not be part of the final contract