

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1802 – CT2232/2021 – Tender for End Disposal Service and Export of Hazardous Clinical Waste**

**3<sup>rd</sup> February 2023**

The Board,

Having noted the letter of objection filed by Dr Ryan C. Pace acting for and on behalf of PT Matic Environmental Services Limited, (hereinafter referred to as the appellant) filed on the 24<sup>th</sup> June 2022;

Having also noted the letter of reply filed by Dr Leon Camilleri acting for Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 1<sup>st</sup> July 2022;

Having also noted the letter of reply filed by Dr Clement Mifsud Bonnici and Dr Calvin Calleja on behalf of Ganado Advocates acting for Green Skip Services Limited (hereinafter referred to as the Preferred Bidder) filed on the 7<sup>th</sup> July 2022;

Having heard and evaluated the testimony of the witness Engineer Oliver Fenech (Representative of PT Matic Environmental Services Limited) as summoned by Dr Ryan C. Pace acting for PT Matic Environmental Services Limited;

Having heard and evaluated the testimony of the witness Mr Charles Debrincat (Representative of Environment and Resources Authority) as summoned by Dr Ryan C. Pace acting for PT Matic Environmental Services Limited;

Having heard and evaluated the testimony of the witness Ms Christina Pisani (Representative of Environment and Resources Authority) as summoned by the Public Contracts Review Board;

Having heard and evaluated the testimony of the witness Mr Ramon Debattista (Chairperson of the Evaluation Committee) as summoned by Dr Ryan C. Pace acting for PT Matic Environmental Services Limited;

Having heard and evaluated the testimony of the witness Engineer Noel Psaila (Member of the Evaluation Committee) as summoned by Dr Ryan C. Pace acting for PT Matic Environmental Services Limited;

Having heard and evaluated the testimony of the witness Engineer Noel Psaila (Member of the Evaluation Committee) as summoned by Dr Leon Camilleri acting for Central Procurement and Supplies Unit;

Having heard and evaluated the testimony of the witness Ms Mary Gaerty (Representative of Green Skips Services Ltd) as summoned by Dr Clement Mifsud Bonnici acting for Green Skip Services Limited;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sittings of the 24<sup>th</sup> October 2022, 1<sup>st</sup> November 2022 and 22<sup>nd</sup> November 2022 hereunder-reproduced;

## Minutes

### Case 1802 – CT 2232/2021 – Tender for End Disposal Service and Export of Hazardous Clinical Waste

The tender was issued on the 3<sup>rd</sup> February 2022 and the closing date was the 17<sup>th</sup> March 2022. The estimated value of the tender, excluding VAT, was € 5,164,840.

On the 24<sup>th</sup> June 2022 PT Matic Environmental Services Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority objecting to their disqualification on the grounds that their bid was not the cheapest priced offer.

A deposit of € 25,824 was paid.

There were three (3) bids.

On the 24<sup>th</sup> October 2022 the Public Contracts Review Board composed of Mr Kenneth Swain Chairman, Ms Stephanie Scicluna Laiviera and Mr Richard Matrenza as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

#### Appellant – P T Matic Environmental Services Ltd

Dr Ryan C Pace	Legal Representative
Eng Oliver Fenech	Representative

#### Contracting Authority – Central Procurement and Supplies Unit

Dr Leon Camilleri	Legal Representative
Dr Alexia Farrugia Zrinzo	Legal Representative
Mr Hristo Ivanov Hristov	Secretary Evaluation Committee
Eng Noel Psaila	Member Evaluation Committee
Mr Rayfonz Borg	Member Evaluation Committee

#### Recommended Bidder – Green Skip Services Ltd

Dr Clement Mifsud Bonnici	Legal Representative
Dr Calvin Calleja	Legal Representative
Ms Mary Gaerty	Representative

#### Department of Contracts

Dr Mark Anthony Debono	Legal Representative
------------------------	----------------------

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Ryan Pace Legal Representative for PT Matic Environmental Services Ltd said that the tender dealt with the disposal and export of clinical waste but going by the evaluation outcome the objective of the tender seems to have been ignored. Past negotiated procedures included export of the waste. PT Matic is the only company that has a licence to export such waste which is very specific and demands special requirements. The Tender Evaluation Committee (TEC) chose a bidder which did not have the

capacity to export nor the necessary insurance. The objective of the tender will not be met. He will be calling witnesses.

Dr Leon Camilleri Legal Representative for the Central Procurement and Supplies Unit stated that the Authority's reply makes it clear that the tender document was meant to widen competition as it allows bidders to dispose of the waste either locally or abroad. Throughout the tender there are several reference to 'if applicable' and references to past tenders are irrelevant.

Dr Clement Mifsud Bonnici Legal Representative for Green Skip Services Ltd said that Appellant is concentrating solely on the title of the tender whereas the tender itself opens competition and is performance oriented. The preferred bidder meets the tender requirements.

Dr Debono Legal Representative for the Department of Contracts (DoC) submitted that the Department was not part of the appeal as the objection was against the Contracting Authority to which Dr Mifsud Bonnici replied that this is a CT tender and the DoC is still part of the process although the tender is issued by a different authority.

Engineer Oliver Fenech (464982M) called to testify by the Appellant stated on oath that he is the General Manager in charge of Operations at PT Matic a company which specialises in handling dangerous waste such as blood and infected materials which require special handling. The tender requested the collection and disposal of such waste. There is only one source where this can take place. The option of using the Wasteserv facilities is no longer available due to the problems with the incinerator. This disposal process requires special licences locally and internationally. Witness went on to detail the process required to obtain the necessary licences from the ERA which is a lengthy process in view of the type of waste – this process takes about three or four months at least. The movement and final disposal of this type of waste requires approval. There is no assurance on the length of time to obtain a licence – in some cases it could take seven to nine months.

According to the witness, PT Matic has various licences to handle this waste and also export permits. Special insurance is also required with coverage for environmental liability such as spillages. PT Matic has this special insurance policy to cover third party risks specific to the nature of the waste. Normal general policies exclude these risks. In this tender there is a request for insurance specific to the risks involved in this type of work.

Referred to page 10 (Objective 1.1) of the tender dossier by Dr Camilleri witness stated that he understood the words 'local or abroad' to mean that the bidder had to have either a local solution or dispose of it through export.

Mr Charles Debrincat (17294G) called as a witness by Appellant testified on oath that for six years he has occupied the position of Senior Officer in the Permit Unit at ERA. He explained in detail the local process necessary to export clinical or dangerous waste which broadly followed Regulation 1013/2006 of the European Commission which required as well evaluation by the countries of transit and final destination. This process took anything from two to six months but could be longer. Apart from normal form filling an economic operator had to list the origin of the waste and the sites, the shipping route to final destination including the production process of the waste. Information was also required regarding the costs of treatment, cost of storage at last port of call and shipping plus evidence of any permits issued abroad – this is necessary to work out the financial guarantee required. Also required was the waste carrier authorisation, documents from every carrier involved and third party insurance.

Witness went on to state that PT Matic held the only active permit to export clinical waste with a pending application from Green Skips Ltd being processed currently. This was submitted on the 13<sup>th</sup>

May 2022. Regarding facilities for treatment of waste in Malta witness said that there were three operators: PTM Waste Management Facility which licence expires on 3<sup>rd</sup> November 2025; Green Skips with a licence expiring on 2<sup>nd</sup> July 2023 and the Marsa Terminal Treatment Facility, licence expiring on 31<sup>st</sup> May 2025. PTM can accept waste storage on a temporary basis; Green Skips cannot accept this type of waste for temporary storage pending export whilst the Marsa Terminal Treatment Facility can treat waste for incineration. There is no other facility in Malta for final disposal.

In reply to questions from Dr Camilleri witness said that the procedure he had explained applies for export of waste. Any economic operator can apply for a permit to handle waste but this is restricted in the case of export facilities.

Questioned by Dr Mifsud Bonnici, witness stated that his main involvement is in the processing of Environmental Permits (EP) applications not necessarily waste management facilities plus the applications for waste export. As far as the witness is aware Green Skips have an Integrated Pollution Prevention & Control (ITPC) permit limited to storage and certain pre-treatment of waste but not disposal. Pre-treatment is not considered disposal. In reply to further questioning regarding a Variation Order to the permit witness said that he would have to consult colleagues as the points made were outside his area of duties.

At this stage witness was asked to leave the virtual hearing temporarily.

Dr Mifsud Bonnici said that witness' inability to answer certain questions presents difficulties as the Board could not hear the full story.

Dr Pace expressed the view that there was no point in hearing more witnesses as it was clear that the offer submitted by the preferred bidder did not include export.

Dr Camilleri pointed out that according to the tender, permits and authorisation could be obtained later. The evidence heard does not alter the outcome of the evaluation.

The Chairman proposed a short recess to enable the Board to consider the points made.

On resumption the Chairman said that the Board accepts the request of the preferred bidder, namely that a representative/s of ERA will give evidence on the variation to the licence referred to, namely IP 0001/12/A/V1. The ERA representative/s must also be in a position to confirm if the Marsa Terminal Treatment Facility incinerator is operating and whether at this time treatment and end disposal of clinical waste is being carried out.

The Chairman thanked the parties and directed that this appeal is deferred to the 1<sup>st</sup> November 2022.

End of Minutes of First hearing.

---

## **SECOND HEARING**

On the 1<sup>st</sup> November 2022 the Public Contracts Review Board composed of Mr Kenneth Swain Chairman. Ms Stephanie Scicluna Laiviera and Mr Richard Matrenza as members convened a virtual public hearing to resume considering this appeal.

The attendance for this public hearing was as follows:

**Appellant – PT Matic Environnemental Services Ltd**

Dr Ryan C Pace  
Eng Oliver Fenech

Legal Representative  
Representative

**Contracting Authority – Central Procurement and Supplies Unit**

Dr Leon Camilleri  
Dr Alexia Farrugia Zrinzo  
Mr Ramon Debattista  
Mr Hristo Ivanov Hristov  
Eng Noel Psaila

Legal Representative  
Legal Authority  
Chairperson Evaluation Committee  
Secretary Evaluation Committee  
Member Evaluation Committee

**Preferred Bidder – Green Skips Services Ltd**

Dr Clement Mifsud Bonnici  
Dr Calvin Calleja  
Ms Mary Gaerty

Legal Representative  
Legal Representative  
Representative

**Department of Contracts**

Dr Mark Anthony Debono

Legal Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and noted that at the end of the last hearing witness Mr Charles Debrincat was being cross-examined. He reminded the witness that he was still under oath and invited Dr Mifsud Bonnici to proceed with the cross-examination.

Dr Mifsud Bonnici referred witness to Permit Variation 0001/12/A/V1 (which had earlier been tabled) and he confirmed that questions on this permit variation will be dealt with by his colleague. Asked about any other export permits held by Green Skips witness stated that the firm had a pending request for an application number submitted on 12<sup>th</sup> May 2021 which at their own request was withdrawn on 24<sup>th</sup> February 2022.

Ms Christina Pisani (204894M0 called to testify by the Board stated on oath that as regard the permit variation referred to, the process was started by the Applicant to process different clinical waste. The variation included clinical waste treatment and the removal of hazardous substances from it.

In reply to questions from Dr Pace witness said that this was in addition to the present valid permit 0001/12/A. Witness agreed that permit for storage and other activities mentioned in the ITPC permit was not a permission to export the waste. Asked to explain further witness stated that treatment consists of sterilizing bulk clinical waste by shredding and sterilizing into non-clinical waste – this process was considered as recovery not disposal. The permit does not authorise end-disposal.

Questioned by Dr Mifsud Bonnici witness said that she is an Environmental Protection Officer at ERA and is the case officer on Green Skips waste management. Permit allows holder to convert clinical waste to municipal waste which can end up as landfill, used as fuel or other open options requested by Green Skips. Witness confirmed that treated waste can be used as landfill.

Further questioned by Dr Pace witness said that she was not in a position to reply if the treated waste after the recovery operation can be used as landfill. She would have to check if treatment was considered legally as a recovery operation.

Dr Camilleri said that there was a change in the subject of the questions and the answers given need clarifying.

The Chairman pointed out that it was necessary to clarify the issue if after treatment the waste can be used as landfill.

In reply to further questions from Dr Pace witness stated that Green Skips has no facility to dispose of waste at any time.

Questioned by Dr Mifsud Bonnici witness could not say if the RDF is classified as recovered waste but agreed that if the economic operator decides that treated clinical waste is municipal waste then there is no need for either recovery or export.

At this stage witnesses were asked to leave the virtual meeting to enable discussion on this point.

Dr Pace said that originally witness stated that the treatment of hazardous waste to non-hazardous waste cannot be considered as end-disposal then went on to state that after a recovery operation the material can be sent to land fill – this testimony is conflicting.

According to Dr Mifsud Bonnici witness stated that after treatment one is left with municipal waste which can be disposed of as one of the available options.

The Chairman said that the witness had given two different answers regarding what happens after the elimination of hazardous substances and it was essential that she be asked to clarify whether it is recovery or disposal.

When asked by the Chairman to clarify the above point witness stated that treatment is not considered as disposal of clinical waste and recovery is not disposal either. Witness also confirmed that after the elimination of the hazardous material disposal will be by Wasteserv not at Green Skip's premises.

Further questioned if the Wasteserv incinerator was operational witness confirmed that the incinerator is operational and treating clinical waste.

Mr Ramon Debattista (487976M) called to testify by the Appellant stated on oath that he is the Senior Economic Officer at the Ministry of Health and was the Chairperson of the Evaluation Committee (EC). He confirmed that the call was for disposal service and export of clinical waste. The offer by Green Skips was compliant in all three stages of the evaluation. Export was not an essential condition and the tender stated that it was 'if applicable'. Witness agreed that the title of the tender and the tender dossier do not agree. In this case end-disposal is taking place locally, however he could not say what disposal approved sites exist locally. By end-disposal witness understood the disposal of the residual material after the clinical waste has been removed.

On the matter of the insurance policy witness said that bidder had submitted a business select policy statement from a local company but was not aware if it covered clinical waste liability.

Engineer Noel Psaila (464070M) called as a witness by the Appellant testified on oath that he is the Electrical Engineer in charge of waste management at the Department of Health. Witness stated that the EC felt that there was no need for the bidder to state if it held a permit for disposal of waste and they could therefore accept the offer. He had no information on waste disposal locally. Information

was given by the preferred bidder that it had no end-disposal permit in hand but it was in the process to obtain such permit. Clarification was sought and in the month of May was informed that an application for end-disposal is in progress. A clarification note was submitted which according to the Secretary of the EC was sent on 10<sup>th</sup> May 2022 and replied to on the 15<sup>th</sup> May 2022.

The testimony of the witness was suspended as the Board ran out of time to continue hearing this appeal.

The Chairman thanked the parties for their input and deferred the hearing to the 22<sup>nd</sup> November 2022 at 9.00am.

End of Minutes of Second Hearing

---

### **THIRD HEARING**

On the 22<sup>nd</sup> November 2022 the Public Contracts Review Board composed of Mr Kenneth Swain Chairman. Ms Stephanie Scicluna Laiviera and Mr Richard Matrenza as members convened a virtual public hearing to resume considering this appeal.

The attendance for this public hearing was as follows:

#### **Appellant – PT Matic Environnemental Services Ltd**

Dr Ryan C Pace	Legal Representative
Eng Oliver Fenech	Representative

#### **Contracting Authority – Central Procurement and Supplies Unit**

Dr Leon Camilleri	Legal Representative
Dr Alexia Farrugia Zrinzo	Legal Authority
Mr Ramon Debattista	Chairperson Evaluation Committee
Mr Hristo Ivanov Hristov	Secretary Evaluation Committee
Eng Noel Psaila	Member Evaluation Committee

#### **Preferred Bidder – Green Skips Services Ltd**

Dr Clement Mifsud Bonnici	Legal Representative
Dr Calvin Calleja	Legal Representative
Ms Mary Gaerty	Representative

#### **Department of Contracts**

Dr Mark Anthony Debono	Legal Representative
------------------------	----------------------

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and reminded them that at the last hearing the Board was hearing the evidence of Eng Noel Psaila.

Dr Pace referred the Board to an e-mail submitted by him regarding facilities currently being provided by Wastserv.

Dr Mifsud Bonnici wished to verify if the letter of rectification sent by the Evaluation Committee had been seen by the Board. Regarding the email from Dr Pace, Dr Mifsud Bonnici reminded the Board that submissions in support of a claim should be filed at the time of the original claim. He was not objecting to the submission of the document but was just mentioning it hoping that this will not become the new practice.

The Chairman said that since the e-mail referred to was pertinent to the case he will allow it to be accepted. He then directed that the case proceeds.

Engineer Noel Psaila (464070M) called to testify by the Contracting Authority stated on oath that he is the Director of Engineering at Mater Dei Hospital and is in charge of waste management. He was one of the Evaluators. He said that the objector's bid was refused because it was expensive whilst the preferred bidder was cheaper than even the estimated cost. The TEC had looked into the reason why it was so much cheaper and realised that the preferred bidder was proposing a new methodology for the disposal of waste. The bidder had to commit itself that all permits were in hand at the time of the contract. This point did not seem clear at first, but following clarification it was indicated that the ERA was looking favourably at the methodology proposed by Green Skips. An e-mail from Green Skips indicated this to the TEC.

Witness went on to state that the tender requested the end-disposal of waste and the machine offered would process waste and convert it to inert waste and disposed of it in that state – how was not stated. The Authority wanted the end-disposal of the waste not necessarily export. The tender requested the bidders to either have had permits in hand or proof of commitment that it would have them in hand prior to the award of the contract. The TEC was satisfied that they had the commitment that the permits would be available at the time that the service would be provided. According to Clause 4.7 of the tender insurance did not have to be submitted at tendering stage.

Replying to questions from Dr Pace, witness said that when he said that the bid by Appellant was expensive he meant to say that it was not the cheapest. In regard to the ERA's agreement this was in the form of a letter presented by Green Skips with the bid. [It was pointed out by the Authority and the preferred bidder that this was a confidential rectification document which cannot be divulged publicly].

Dr Pace said that it was important for Appellant to know the contents as the tender decision was based on that document and it cannot present its case without knowing the contents.

The Chairman said the Board would have a short recess to consider Dr Pace's request.

On resumption the Chairman stated that it was the Board's view that at this stage the Appellant should not be given a copy of this letter and of any communications that were exchanged between the preferred bidder and ERA. However, notwithstanding this, Engineer Psaila as an evaluator must in his own words indicate what the TEC's rectification request to the preferred bidder was and the reply that the said bidder submitted to the TEC. This Board is also directly asking Engineer Psaila if ERA gave an unequivocal approval for the use of the mentioned machine.

Engineer Psaila, still testifying, said that the ERA did not unequivocally say that the permit will be issued but indicated that it was inclined to favourably consider their proposal. Green Skips claim that in discussions with ERA they advised them that the machine was already on order and there had been correspondence on the matter.



In reply to further questions from Dr Pace, witness said that no permit was issued in regard to the clarification that was sought but the preferred bidder was in discussions with ERA. According to the literature submitted the machine referred to by Green Skip treats clinical waste and turns it into municipal waste for disposal by the contractor. Witness said he did not know what form the end-disposal took as this was not stated since the machine proposed only dealt with treatment. The permit requested covered only treatment of clinical waste and in this respect witness did not have full details of the process. The conversion of clinical waste depends on the process carried out and witness was not aware if the end product after treatment is automatically changed to municipal waste or not.

[ At this stage witness was asked to withdraw from the hearing to enable legal counsels and the Board to discuss legal points].

At this discussion Dr Pace stated that during the ERA evidence it was established that the end product is RDF not municipal waste. The questions he was asking of witness were intended to establish if clinical waste turns into municipal waste automatically since if it is RDF then there is an issue.

Dr Mifsud Bonnici said that ERA had already confirmed that clinical waste can be turned to municipal waste.

Dr Pace claimed that he was only asking questions for clarification of what happens as we are here talking of a machine that he knows nothing about.

Dr Camilleri suggested that questions should deal with the tender.

The Chairman directed that the questions by Dr Pace are relevant as the tender asks for end-disposal.

On further questioning Engineer Psaila confirmed that he is aware that clinical waste could be converted to RDF and agreed that it does not become municipal waste. He was not aware of the new process proposed except that the literature states that clinical waste becomes inert waste. The conclusions of the TEC were based on the literature submitted and bidder outlined process that inert waste produced could be used as RDF but witness stated that he did not know if inert waste is RDF. Regarding the Insurance it was pointed out to witness that preferred bidder claimed that in respect of this requirement they had offered a business select policy statement and was asked if in examining that document he could find the words 'clinical waste' risks included. Witness stated that he could not find such words.

Questioned by Dr Mifsud Bonnici, witness confirmed that the request for rectification was made under Note 2. The TEC relied on the information and methodology to be used by bidder in using the machine to dispose of the waste and the disposal method was open to two options – disposal as landfill or recovery as RDF – inert waste was considered by the Evaluation as landfill. All the replies given apply to the time they were made. Witness stated that he was not aware of the variation notice of the ITPC permit and he had only heard about it during these appeal hearings. The tender gave options to reduce costs and the Authority was ready to accept bidders without permits but which committed themselves to obtain such permits.

Ms Mary Gaerty ( 655752M) called as a witness by Green Skips Services Ltd testified on oath that she is a Director of the Company and that it offers the treatment and export of hazardous waste. She explained that since 2020 the Company had discussed the treatment of waste with the ERA. As their permit was due to expire in July 2022 and since the renewal is a lengthy six months process the ERA suggested a variation which included the treatment of clinical waste at their own premises. At the time that the tender closed, in March, no permit was in hand but the process to obtain it was going

ahead. In May 2022 ERA indicated that their proposal was receiving favourable consideration by them although this was known well before the said May letter.

Witness went on to explain that after treating waste there are two options – municipal waste (20.03.99) or other waste including mixtures from mechanical treatment of waste (19.12.12). Treating waste in Malta has the advantage of the proximity principle and the advantage of circular economy and the savings in costs of exporting and reduction of CO<sup>2</sup> - matters to be considered within Maltese and European legislation. On the matter of insurance the Company already has existing insurance for activities in clinical waste and covers all their activities and therefore there was no need to specify details. Insurance had advised them that clinical waste was covered.

Questioned by Dr Pace witness said that as at this day the permit for the machine was granted. The ITPC permit is global and authorises all activities in their operations and therefore the variation for the machine is covered by a permit. The Authority requested treatment of clinical waste which once processed by machine is no longer clinical waste and ceases to be the responsibility of the Health Department – it then becomes the bidders and ERA's responsibility. Both options had been given to ERA said the witness and she agreed that option 19.12.12 is for conversion to RDF which is not possible to dispose of in Malta but has to be exported. Witness also agreed that Green Skips do not have a permit to export, although they could apply for it. She was reminded that Engineer Psaila in his testimony had referred to inert waste – she agreed that municipal waste and inert waste were not the same.

In reply to a question from Dr Camilleri, witness stated that the variation of the ITPC permit covers the proposed machine which converts hazardous clinical waste into municipal waste and disposes of it in Malta, and this is what Green Skips was offering.

This concluded the testimonies.

Dr Pace said that the appeal was on two grievances – one related to the export part and the second on the question of the insurance. He agreed with Engineer Psaila when he said that if the end objective of the tender is achieved with a saving of money this is laudable – however he disagrees with him that this open competition did not include export. Export was an option and even the Chairman of the TEC agreed that the title and the tender do not agree. The point is whether export is the ultimate answer. The conclusion from what transpired in this hearing is that there is no option. The preferred bid does not offer export and no local economic operator in Malta can offer end-disposal of clinical waste – the only place it could happen is Wasteserv and it has now been confirmed that that is not possible. As this is the only treatment facility in Malta and it is not operative the alternative is that one is forced to export for end-disposal. It has been confirmed by ERA that the only economic operator authorised to export clinical waste is the Appellant firm.

The offer of the preferred bidder, continued Dr Pace, proposes the treatment of clinical waste turned into inert waste. Mrs Gaerty claims that her Company offers two options – municipal waste and RDF. One is surprised that there is no agreement between witnesses whether the result is municipal waste or inert waste; as a matter of interest the latter product is not accepted anywhere. Treatment is not end-disposal and therefore the objective of the tender is not reached. Moreover according to Mrs Gaerty once the waste is treated it is no longer their responsibility, so this option leaves the CPSU with a load of inert waste. This tender is particular as it deals with hazardous waste and one must know the end-disposal. The RDF option suggested by Mrs Gaerty cannot be used as they have neither applied for nor have an export permit and therefore it is out of the question. It is still unclear because of disagreement between the witnesses whether we are dealing with inert or municipal waste.

On the matter of insurance, stated Dr Pace, it has been argued that there is the special performance condition in place. The Chairperson of the Evaluation Committee Mr Debattista had testified that it was not a special performance condition but a condition that a detailed insurance had to be submitted at tendering stage. This is clear and there is no cause for confusion that Insurance had to be submitted at tendering stage. Special Condition 4.8 confirms the requirement that insurance had to be submitted as a separate document. In Clarification Note 3, issued on the 17<sup>th</sup> March 2022 there is specific reference that it must show clinical waste liability. Engineer Psaila confirmed that in the select business policy statement there is no reference to clinical waste liability nor do those words appear in the document. This particular clause is always included in a policy and the tender is clear that it is required. The preferred bidder could never succeed on this point or on the document submitted as this was not what was required in the tender.

Dr Mifsud Bonnici said that what was included in the letter of reply still applied. This was an attempt by the incumbent operator to remove competition. The Authority carried its task correctly and the tender was widened for the benefit of more competition. The Board should not let incumbents maintain an inefficient operation when there is the chance of the proximity principle and new technology.

The tender conditions are the ruler to be used. The argument put forward that the preferred bidder is not authorised to export does not apply as was made clear both from the tender document and the witnesses. Export was not mandatory – the tender was flexible and Green Skips offer was compliant. Firstly the tender methodology allows freedom on how to dispose of the waste through a local solution and secondly the tender gave options with proof of commitment or permit to be provided at commencement. Green Skips obtained confirmation from ERA that the permit will be issued and *post facto* the variation was issued and the tender satisfied. The variation permit states what is covered and it did cover treated waste. No proof has been provided that this treatment cannot be done and the solution of the preferred bidder covers the collection and disposal of the waste. Wasteserv are obliged to accept the end-waste.

There is no point in creating doubts as the process is clear. The response to the clarification note confirms that the machine converts clinical waste to municipal waste and it is clear that ERA were minded to confirm this as from the time of the bid with a reference to early indications. Insurance was not requested at tendering stage and this is clear from the literature list. Condition 4.8 speaks of details, but not of an insurance policy – if there was any doubt on this one could always seek clarification. The policy covers all necessary requirements and operations.

Dr Camilleri said that the tender opens competition and given the difference in the prices offered confirms the proper use of procurement procedures. In this case it was possible to fulfill the tender either by export or alternatives – the tender in several places stated ‘if applicable’ as alternatives. If this was not clear to Appellant here was the clear option of an application under Regulation 262. The document is clear as it states ‘local or abroad’ and hence the argument about export is fallacious if the treatment is going to be local. This is a case of innovative method of disposal which fits the tender condition. The issue about the permit was pursued unnecessarily as proof of commitment was made clear in the tender and was sufficient as provided and as confirmed by the ERA.

Green Skips bid includes end-disposal which is a routine operation. Engineer Psaila confirmed that the waste will be converted to municipal waste and this was confirmed by Mrs Gaerty. The TEC diligently carried out the evaluation, was satisfied and recommended the award. Insurance is a contract obligation and bidders were not obliged to submit the policy at tendering stage. Reference was made to Court of Appeal Case Cherubino vs Director of Contracts where a clear distinction was made by the

Court between criteria at tender stage and at contract execution stage. This is a tender evaluation not contract execution and bids have been treated equally and self-limitation applied.

Dr Pace in a brief final comment said municipal and inert waste were not the same and it is regrettable that Engineer Psaila who should have known better used the terms interchangeably which caused confusion. Also it is be noted that insurance in Condition 4.8 came under note 3 not Note 2.

The Chairman thanked the parties for their forbearance in this long case and declared the hearing closed.

End of Minutes

---

**Hereby resolves:**

The Board refers to the minutes of the Board sittings of the 24<sup>th</sup> October 2022, 1<sup>st</sup> November 2022 and 22<sup>nd</sup> November 2022.

Having noted the objection filed by PT Matic Environmental Services Limited (hereinafter referred to as the Appellant) on 24<sup>th</sup> June 2022, refers to the claims made by the same Appellant with regards to the tender of reference CT2232/2021 listed as case No. 1802 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Ryan C. Pace
Appearing for the Contracting Authority:	Dr Leon Camilleri & Dr Alexia Farrugia Zrinzo
Appearing for the Preferred Bidder:	Dr Clement Mifsud Bonnici & Dr Calvin Calleja

Whereby, the Appellant contends that:

- a) Reference is made to the Standard Operating Procedures issued by the Department of Contracts whereby it is unequivocally provided that the evaluation of technical offers is ought to be carried out on all technical aspects comprising the said offer such that in the eventuality that a prospective bidder's offer is found to be, following an evaluation of all technical aspects, technically non-compliant, that very same offer should not be considered any further, irrespective of its financial compliance or otherwise.

In a judgment delivered on the 24<sup>th</sup> of June 2016 by the Honourable Court of Appeal in the names of Disabled Persons Co-Operative Limited v. Direttur Generali tal- Kuntratti, the said Court held that: *“l-principju ta' trasparenza jrid li l-Kumitat ta' evalwazzjoni jimxi mad-dettalji teknici kif imniżżla fid-dokument tas-sejba, u mhux jiddeciedi li jagħzel liema li jidbirlu li hi l-abjar offerta.”*

Indeed, this is only one of many judgments delivered by the Court of Appeal throughout which the underlying principles of transparency and self-limitation are echoed. Evaluation Committees are duty bound to restrict their evaluation to the specifications and conditions of the applicable tender dossier. Regrettably, the decision of the Director General (Contracts) subject of this notice of objection attests to a flawed evaluation process which did not match the level of scrutiny one would reasonably expect when dealing with such sensitive and delicate matters, prejudicing - in its wake - the integrity of the entire process.

The appellant humbly, but firmly, submits that as a result of this apathetic evaluation, the Evaluation Committee has now brought about a situation whereby the Contracting Authority is unable to achieve the objectives set out in the tender dossier, that is the disposal and export of *“the Infectious Hazardous Waste 18 01 03\* in the European Waste Catalogue of the EU Waste Framework Directive, and Commission Decision 2000/532/EC.”* This in view of the fact that the preferred bidder does not possess an export permit validly issued by the competent Authority to export the specific hazardous waste (clinical waste) to which this tender relates. The preferred bidder does not, at a minimum, have a pending request to obtain an export permit for *“the Infectious Hazardous Waste 18 01 03\* in the European Waste Catalogue of the EU Waste Framework Directive, and Commission Decision 2000/532/EC”*

The appellant company, which ironically is the only company in favour of which an export permit for clinical waste – *“the Infectious Hazardous Waste 18 01 03\* in the European Waste Catalogue of the EU Waste Framework Directive, and Commission Decision 2000/532/EC”* - has been validly issued by the competent Authority fails to comprehend how such a fundamental requisite necessary to attain the objectives set out in the tender document could have ever been overlooked. This compounded further by the fact that the Contracting Authority clearly requested, as a mandatory requirement and prior to the award of the contract, *“the applicable permits/registrations and/or proof of commitment that permit/registration will be in hand by the commencement date of the contract”*. - not to mention that it was also requested as an essential document as per section 4.8 (tender document, page 14). It remains unexplained, therefore, how an Evaluation Committee, supposedly comprised of technical people, recommends to award a contract for the disposal and export of clinical waste to a bidder who does not possess (nor is expected to possess in the near future) an export permit over another bidder (the appellant company) who is the only company who is in possession of a valid export permit.

- b) In addition to the foregoing, section 4.1.m of the tender dossier clearly and explicitly provides that the works and services requested by the Contracting Authority by virtue of the above-captioned tender shall be covered by an *“Insurance Cover for all the Works and Services, including third party liabilities”*. Following a clarification note issued on the 17th of March 2022 (Clarification Note 3), it was further clarified that the insurance cover which is being requested in this tender dossier is not a standard insurance policy which typically excludes the handling of clinical waste related works - but a customised insurance policy (Clinical Waste Liability) which covers the collection, handling,

transportation, and disposal of clinical waste. It transpires that here too, the Evaluation Committee did not attach, at evaluation, the importance to this mandatory and essential requirement that the tender dossier sought to afford - this, therefore, in breach of the principle of self-limitation.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 1<sup>st</sup> July 2022, its verbal submission during the virtual hearings held on 24<sup>th</sup> October 2022, 1<sup>st</sup> November 2022 and 22<sup>nd</sup> November 2022, in that:

- a) The objector bases its argument on the fact that the recommended bidder does not possess a specific export permit for the hazardous waste that was indicated in the tender and boasts of the fact that it is the only company in Malta possessing such permit. The first section of the terms of reference under the sub heading objectives, page 10 of the tender document clearly provides that: *"1.1 The Health Division is presently asking for offers from duly licensed, experienced Contractors to provide on demand turnkey services for the further labelling and packaging, as may be required, collection, loading, carriage, transport, END DISPOSE at an approved and duly licensed facility (local or abroad), or other statutorily approved treatment of hazardous clinical wastes as arising from various Public Healthcare Institutions."* Moreover, throughout the tender document, in most if not all instances where export is indicated, the words 'if applicable' are added. This shows in a crystal clear manner, that the export of hazardous waste is not a sine qua non condition but an option which a prospective contractor can opt for in order to achieve the requested end of the tender, that is the end disposal at an approved and duly licensed facility. CPSU can confirm that the recommended offer proposed end disposal in Malta in line with the provisions of the tender which clearly allowed for in terms of the tender document, as will be better explained during the hearing.

The fact that the tender document in section 4.7 (a) requests documentation: The method and procedures to be applied by the bidder to provide the turnkey service up to end disposal also shows in a clear and unequivocal manner that the method to achieve the end objective of the contracting authority was up to the economic operator to determine. The following sub section elaborates further requests documentation *'Depending on the procedures to be applied by the bidder to provide the turnkey service up to end disposal.'*

Sub section b in fact requested that the bidder submits documentation: *"Depending on the procedures to be applied by the bidder to provide the turnkey service up to end disposal, the bidder must submit with the offer the applicable permits/registrations and/or proof of commitment that permit/registration will be in hand by the commencement date of the contract subject to the following: [...]"* The above quoted clause therefore clearly shows that even if the objector was to export waste (or end dispose the waste in any other way legally permissible), a permit at submission stage was not required and what was requested at submission stage was a proof of commitment that permit/registration will be in hand by the commencement date of the contract.

- b) On the Insurance Policy - In this part of (sic) the objector claims that the evaluation committee failed to give the importance to the requirements of the tender document relating to insurance policies. First of all, the objector does not have any access to the insurance policy documents submitted with the recommended offer therefore one naturally questions on what basis is this part of the objection being based on.

Secondly, the tender document does not in any part state that the insurance policy is required at tender submission stage. The principle of self limitation means in simple terms that the evaluation committee is limited and restrained by the provisions of the tender document which shall be given a strict interpretation as practically as possible. What the objector is suggesting is that the tender document is given a stricter interpretation than what the clear words of the tender document clearly require.

This Board also noted the Preferred Bidder's Reasoned Letter of Reply filed on 7<sup>th</sup> July 2022, its verbal submission during the virtual hearings held on 24<sup>th</sup> October 2022, 1<sup>st</sup> November 2022 and 22<sup>nd</sup> November 2022, in that:

- a) On the matter relating to the export permit, the Tender Dossier was clear and unambiguous on what bidders were required to submit at tender stage. The tender condition at issue is Clause 4.7 of Section 3 - Terms of Reference of the Tender Dossier.

*"4.7 Documentation to be submitted by Bidders with their offer*

- a. The method and procedures to be applied by the bidder to provide the turnkey service up to end disposal.*
- b. Depending on the procedures to be applied by the bidder to provide the turnkey service up to end disposal, the bidder must submit with the offer the applicable permits/registrations and/or proof of commitment that permit/registration will be in hand by the commencement date of the contract subject to the following:*
- i. For Transfer from site of generation and delivery to waste management facility: - Carriage of waste is to take place through registered waste carrier vehicles (class D3) and due to the hazardous nature of waste, a consignment permit (CP) and consignment note (CN) procedure is to be followed. If waste will be directly exported (transported to port) from site of generation without being stored at a waste management facility in the interim, no waste carrier registration or CP/CN is required.*
- ii. For Temporary storage (if applicable); - The site where such waste will be temporarily stored prior to export shall be covered by an Environmental Permit/PPC permit (depending on the amount stored/processed). If waste will be directly exported from the waste generators without being stored/processed in the interim, no EP/IPPC permit is required, and a waste broker registration is required instead,*
- iii. For Export to facilities overseas: - The export of this waste stream for disposal overseas is subject to the prior informed consent procedure pursuant to Art 4. of Regulation (EC) 1013/2006 on shipments of waste (WSR). In*

*this context, if the contract will be awarded to a waste broker for the export of this waste stream directly from site of generation to the port of dispatch, a prerequisite for the service provider would be the possession of a valid waste broker registration. On the other hand if the contract will be awarded to a waste management facility, which will include temporary storage of this waste stream at an approved site prior to export, the prerequisites for the service provider would be the possession of a waste carrier registration for the appropriate the carriage and a valid Environmental Permit/IPPC permit for the temporary storage of this waste stream at an approved waste management facility. The consignment permit and notification for export of the waste may be completed after the awarding of the contract. However, this shall not be considered a valid reason for the contractor not being able to render service on the commencement date of the contract. Any Permits/Registrations must include the relative waste identification code as per European Waste Catalogue.”*

It is evident that the bidders were given the facility to decide on the "method and procedure" to provide the turnkey service up to end disposal.

The Recommended Bidder, in its bid TID 170620, has decided to apply the following method (sic) for the waste subject-matter of this Tender Dossier: *“Transfer from site of generation and delivery to waste management facility”*, and therefore, it submitted any and all documents required with the same. The Recommended Bidder has specifically decided not to apply the method *“Export to facilities overseas”* in its bid TID 170620 and rather complete the execution and performance of the contract services in Malta and at an *“approved an duly licensed facility (local [...])”*. This was expressly allowed by the very objectives (also quoted by the Appellant):

*“1.1. The Health Division is presently asking for offers from duly licensed, experienced Contractors to provide on demand turnkey services for the further labeling (sic) and packaging, as may be required, collection, loading, carriage, transport, END DISPOSE at an approved and duly licensed facility (LOCAL or abroad), or other statutorily approved treatment of hazardous clinical wastes as arising from various Public Healthcare Institutions. [...]*

*1.3. Bidders are to ensure any eventual further labelling and packaging, as statutorily required, locally or internationally, and the collection, loading, transport, export (including carriage) if applicable, end disposal at a duly licensed facility, and certifications are to be carried out by the contractor, and are included in this Works and Services Contract.”*

As correctly pointed out by the Contracting Authority, there are other instances in the Tender Dossier which clearly and unambiguously provides that export is not mandatorily required and the bidder may elect to apply a "method and procedure" which does not require export.

In conclusion, and on the basis of the above, the Appellant's contention and grievance that the Recommended Bidder's offer ought to be rejected because its (sic) does not possess *“an export permit validly issued by the competent authority to export the specific waste (clinical waste)”* is simply unfounded and the Appellant's demand to set aside the Recommended Bidder's offer is fundamentally incompatible with the principles of equal treatment, transparency and self-limitation.



- b) The Appellant's argument on the matter of the insurance policy is difficult to follow. The Appellant's inference that the Recommended Bidder did not submit this document is pure speculation as very much like the rest of this appeal--since the Appellant could not have had access to the Recommended Bidder's bid. In any case, the Recommended Bidder fully agrees that the insurance requirement required by Clarification Note 3 was not required at tender submission stage. The insurance requirement in Clarification Note 3 is a PERFORMANCE CONDITION which is to be satisfied by the successful contractor upon award and not a SELECTION CRITERION which has to be satisfied at tender stage.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances. Initially, this Board will refer to the testimony under oath of various witnesses and list down the main statements which again are deemed the most relevant. Finally, this Board will provide its conclusions on the matter and grievances of the Appellant.

Extracts from testimony under oath of Engineer Oliver Fenech

- a) *"The option of using the Wasteserv facilities is no longer available due to the problems with the incinerator"*

Extracts from testimony under oath of Mr Charles Debrincat

- a) *".....the local process necessary to export clinical or dangerous waste which broadly followed Regulation 1013/2006 of the European Commission which required as well evaluation by the countries of transit and final destination. This process took anything from two to six months but could be longer."*
- b) *"PT Matic held the only active permit to export clinical waste"*
- c) *"....Green Skips have an Integrated Pollution Prevention & Control (ITPC) permit limited to storage and certain pre-treatment of waste but not disposal. Pre-treatment is not considered disposal."*

Extracts from testimony under oath of Ms Christina Pisani

- a) *"The variation (by Green Skips) included clinical waste treatment and the removal of hazardous substances from it."*
- b) *"permit for storage and other activities mentioned in the ITPC permit was not a permission to export the waste."*
- c) *"treatment consists of sterilizing bulk clinical waste by shredding and sterilizing into non-clinical waste – this process was considered as recovery not disposal. The permit does not authorise end-disposal."*
- d) *"Permit allows holder to convert clinical waste to municipal waste which can end up as landfill"*

- e) *“...treated waste can be used as landfill...”*
- f) *“I am not in a position to reply if the treated waste after the recovery operation can be used as landfill”*
- g) *“treatment is not considered as disposal of clinical waste and recovery is not disposal either.”*
- h) *“the incinerator (Wasteserv) is operational and treating clinical waste”*

Extracts from testimony under oath of Mr Ramon Debattista

- a) *“...cannot say what disposal approved sites exist locally”*
- b) *“.....bidder had submitted a business select policy statement from a local company but I am not aware if it covered clinical waste liability.”*

Extracts from testimony under oath of Engineer Noel Psaila

- a) *“We had no information on waste disposal locally”*
- b) *“Information was given by the preferred bidder that it had no end-disposal permit in hand but it was in the process to obtain such permit.”*
- c) *“The bidder had to commit itself that all permits were in hand at the time of the contract. This point did not seem clear at first, but following clarification it was indicated that the ERA was looking favourably at the methodology proposed by Green Skips. An e-mail from Green Skips indicated this to the TEC”*
- d) *“the tender requested the end-disposal of waste and the machine offered would process waste and convert it to inert waste and disposed of it in that state – how was not stated. The Authority wanted the end-disposal of the waste not necessarily export.”*
- e) *“The TEC was satisfied that they had the commitment that the permits would be available at the time that the service would be provided.”*
- f) *“ERA did not unequivocally say that the permit will be issued but that it was inclined to favourably consider their proposal.”*
- g) *“.....aware that clinical waste could be converted to RDF and that it does not become municipal waste.”*
- h) *“..... not aware of the new process proposed except that the literature states that clinical waste becomes inert waste. The conclusions of the TEC were based on the literature submitted and bidder outlined process that inert waste produced could be used as RDF”*
- i) *“.... don’t know if inert waste is RDF.”*
- j) *“The tender gave options to reduce costs and the Authority was ready to accept bidders without permits but which committed themselves to obtain such permits.”*

Extracts from testimony under oath of Ms Mary Gaerty

- a) *“Green Skips do not have a permit to export, although we could apply for it”*

- b) *“municipal waste and inert waste were not the same.”*

Board conclusions – 1<sup>st</sup> grievance – Export Permit

- a) As from the outset, this Board notes the unfortunate circumstance that even at the initial parts of drafting of the tender dossier, anomalies occurred. The title of the tender dossier gives the impression that ‘export’ is a ‘necessity’ and / or is a mandatory criteria. Paragraph 1.1 of section 1, being the very first provision of the tender dossier provides and gives a different perspective by saying “..... *including export where applicable*”. Even though, this Board opines that this anomaly is in substance not material to this appeal, it does however stress on the importance of proper tender dossier drafting.
- b) The subject of this tender as per paragraph 1.1 of section 1 “.. *is the collection and transportation services of various hazardous waste as arising from various healthcare institutions for **end disposal**, including export where applicable.*” (bold & underline emphasis added). As per objective 1.1 of Section 3, this ‘end disposal’ must be done “.....*at an approved and duly licensed facility (local or abroad)*”. There are other various instances in the tender dossier where this ‘option’ of ‘local or abroad’ is mentioned. Therefore, a number of questions arise. Can the end disposal be done / performed locally? Did the option presented by preferred bidder meet the requirements of the tender dossier? Is its execution at all possible to be performed locally?
- c) A point of fact which was not disputed between the parties is the fact that PT Matic (appellant) is the only economic operator to hold an active permit to export clinical waste.
- d) Reference is now made to the testimony under oath of Ms Christina Pisani whereby
- i. at different instances of her testimony she provided conflicting evidence (specific reference to points ‘e’ and ‘f’ of the extracts of her testimony). Such extracts will not be relied on by this Board.
  - ii. Another point which this Board will not rely on is her statement that “*the incinerator (Wasteserv) is operational and treating clinical waste*”. As per evidence submitted by Appellant, Mr Daniel Jacob Tabone, Deputy Chief Operations Officer Wasteserv wrote on 14<sup>th</sup> November 2022 “*Regarding below, WSM confirms that currently it has restricted capacity to accept clinical waste and in fact it has stopped such acceptance from the largest generators in the island. This situation will improve in 2023 however we may have recurrences due to plant operations*”
  - iii. What was clear from her testimony is that Green Skip’s variation (permit) includes 1) clinical waste treatment 2) is not a permission to export the waste and 3) the process undertaken is considered as recovery but not disposal thereof.
- e) Reference is now made to the testimony under oath of Engineer Noel Psaila whereby:
- i. Initially he stated “*We had no information on waste disposal locally*”. The Board finds this statement worrisome, especially when cross referenced to the evidence submitted by

appellant (reference to email of 14<sup>th</sup> November 2022 from Mr Daniel Jacob Tabone, Deputy Chief Operations Officer Wasteserv)

- ii. Another statement that is also worrisome is the following: *“Information was given by the preferred bidder that it had no end-disposal permit in hand but it was in the process to obtain such permit.”* As explained by Ms Christina Pisani, *“..... this process was considered as recovery not disposal. The permit does not authorise end-disposal”*. What the tender required is ‘end disposal’.
  - iii. He stated; *“The TEC was satisfied that they had the commitment that the permits would be available at the time that the service would be provided.”* However, he also stated that *“ERA did not unequivocally say that the permit will be issued but that it was inclined to favourably consider their proposal.”* This Board finds that the wording used by ERA to ‘favourably consider’ should not have been taken as a ‘commitment’ that the permit will be issued. A ‘commitment’ includes an obligation and / or a binding element, whilst ‘to favourably consider’ cannot be stretched to have the same meaning!
  - iv. In other parts of his testimony, it transpired that the evaluation committee lacked the technical expertise to properly assess and evaluate the technical aspects of the participants’ bids (reference to points ‘g’, ‘h’, and ‘i’ of the extracts of his testimony.
- f) From all the above, this Board opines that:
- i. It agrees with arguments brought forward by the Appellant that all in all, in the absence of alternative facilities, there was no option other than for export.
  - ii. No economic operator in Malta can offer local end-disposal of clinical waste.
  - iii. The sole option for local end disposal is through the ‘assistance’ of Wasteserv, something which has been ascertained as not being possible (at least at the time of tender submissions and for the short-term foreseeable future)

Therefore, this Board upholds Appellant first grievance.

#### Board conclusions – 2<sup>nd</sup> grievance – Insurance

- a) In line with clause 4.8 of the ‘Terms of Reference’ of the tender dossier, some form of evidentiary documentation in relation to insurance had to be submitted at tendering stage Clause 4.8 states *“Bidders shall include **in their submissions**, a separate document titled Essential Documentations. **Giving documented details** of their Company Profile..... and **insurances**....”* (bold & underline emphasis added).
- b) Reference is hereby being made to the testimony under oath of Engineer Noel Psaila where he stated *“cannot find such words”*, in relation to ‘clinical waste in the business select policy statement as submitted by the preferred bidder.
- c) Therefore, this Board opines, that it transpires that the evaluation was not done thoroughly and in enough detail.

- d) Argumentation brought forward by the Preferred Bidder in relation to the Literature List where in relation to clause 4.8 it only required a “Company Profile”, this Board opines that none-the-less, either an insurance policy or other form of documentation clearly listing end disposal of clinical waste or equivalent is to be mentioned.

Therefore, this Board upholds Appellant’s second grievance.

**The Board,**

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

- a) To uphold the Appellant’s concerns and grievances;
- b) To cancel the ‘Notice of Award’ letter dated 14<sup>th</sup> June 2022;
- c) To cancel the Letters of Rejection dated 14<sup>th</sup> June 2022 sent to PT Matic Environmental Services Limited;
- d) To order the contracting authority to re-evaluate the bid received from PT Matic Environmental Services Limited in the tender through a newly constituted Evaluation Committee composed of members which were not involved in the original Evaluation Committee, whilst also taking into consideration this Board’s findings. The Evaluation Committee is to also have at least one member who is a technical expert on the subject matter;
- e) after taking all due consideration of the circumstances and outcome of this Letter of Objection, directs that the deposit be refunded to the Appellant.

**Mr Kenneth Swain**  
Chairman

**Ms Stephanie Scicluna Laiviera**  
Member

**Mr Richard A Matrenza**  
Member