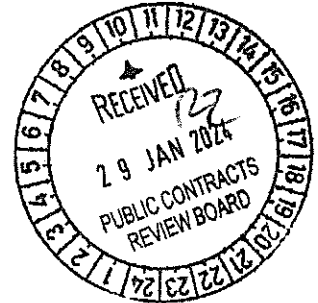


Dr. Ryan C. Pace LL.B., LL.D.

A D V O C A T E

53/3, Strait Street, Valletta

Public Contracts Review Board
info.pcrb@gov.mt



29th January 2024

RE: CPSU 2494/23 – Tender for End Disposal Service and Export of Hazardous Clinical Waste

I have been instructed by PT Matic Environmental Services Limited (C 17720) having its registered office at Alberta Head Office, San Gwakkın Road, Mrieħel, Birkirkara to file this notice of objection on their behalf regarding the decision of the Central Procurement & Supplies Unit (hereinafter referred to as 'CPSU') of the 19th of January 2024 wherein my client's procurement proposal was found to be "non-compliant" on account of the fact that "[a]lthough [the] offer is Eligibility compliant, technically compliant and within estimated budget, it is not the cheapest offer financially."

The above-quoted decision further elaborates that "[t]he procurement was recommended for award to Messrs <Green Skip Services Ltd> for the amount of [€200,850.00c] excluding VAT, this being the cheapest priced offer satisfying the administrative and technical criteria."

The appellant company feels highly aggrieved by the abovestated decision and is resultantly filing the present objection/appeal for the reasons outlined hereunder.

As per the applicable terms of reference, "[t]he Health Division is presently asking for offers from duly licensed, experienced Contractors to provide on demand turnkey services for the further labeling 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."

To avoid ambiguities and to ensure that the Health Division's objectives are clearly laid out to all prospective bidders, the Health Division went as far as to identify which type of clinical waste it sought to have disposed, more specifically "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 CPSU's decision to award this procurement to the preferred bidder (Green Skip Services Limited) – on the basis, hereby vehemently contested, that it has submitted “*the cheapest priced offer satisfying the administrative and technical criteria*” – attests to an incomplete and non-technical evaluation process – which arbitrarily discarded the objective of this procurement – such that with its recommendation, and eventual award, **the scope underpinning this procurement procedure, that is the end disposal of “the Infectious Hazardous Waste 18 01 03”, cannot, and will not, be achieved.**

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 addition to the foregoing, evaluations cannot be undertaken in isolation of the contracting authority's final objectives. To this end, evaluators must necessarily possess adequate technical knowledge to be able to ensure that any such objectives are by no means jeopardized. In a judgment delivered on the 24th of June 2016 by the Honourable Court of Appeal in the names of ***Disabled Persons Co-Operative Limited v. Direttur Ġenerali tal-Kuntratti***, the said Court held that “[i]l-prinċipju ta' trasparenza jrid li l-Kumitat ta' evalwazzjoni jimxi mad-dettalji tekniċi kif imniżżla fid-dokument tas-sejha, **mhux jiddeċiedi li jaqgħzel liema li jidhirlu li hi l-aħjar offerta.**” Regrettably, the CPSU's endorsement of the Evaluation Committee's recommendation confirms that the evaluation process did not match the level of scrutiny one would reasonably expect in such circumstances, this leading to an undesirable scenario whereby the preferred procurement proposal is not one which will fully attain the final objectives of this procurement procedure, namely the **end disposal** of “*the Infectious Hazardous Waste 18 01 03*”.

The Evaluation Committee, and CPSU thereafter, presumably relied on a recently approved notification, issued in favour of the preferred bidder, to justify the award of this procurement. What the Evaluation Committee, and CPSU thereafter, must have overlooked, however, is that said notification speaks nothing of end disposal. Thus, while the requested turnkey services were meant to be “*up to end disposal*”, the award is in favour of an economic operator which is not yet licensed to offer end disposal. Then, to add insult to injury, the **only** economic operator (the appellant company) which can guarantee the total successful attainment of this procedure's end objectives – since it is duly permitted to offer end disposal of “*the Infectious Hazardous Waste 18 01 03*” – was unsuccessful. As baffling as it may seem, given that evaluation ought to be undertaken by technical individuals who are well versed in this subject matter, it is evident that the Evaluation Committee evaluated the preferred bidder's offer from a strictly monetary perspective, doing away with everything else, including the procurement procedure's ultimate objectives.

Wherefore, my client objects to the decision taken by CPSU of the 19th of January 2024 as per above and respectfully requests the Board:

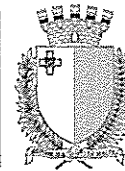
- i) to accede to this objection/appeal and find in favour of PT Matic Environmental Services Limited in that it shall reverse the decision of CPSU of the 19th of January 2024;
- ii) to declare Green Skip Services Limited's offers to be technically non-compliant;
- iii) to reintegrate PT Matic Environmental Services Limited's offer in the tendering process;
- iv) to order anything else which is conducive and necessary for the execution of the foregoing requests;
- v) to order the reimbursement of the deposit being paid hereon.

Finally, a bank transfer of € 1,090.00 representing the deposit requested in connection with the filing of this objection/appeal has been affected.

With costs.

A handwritten signature in black ink, appearing to read 'Dr. Ryan C. Pace', written in a cursive style.

Dr. Ryan C. Pace



Date: 19th January, 2024.

CFT Reference: <CPSU 2494/23>

Tender ID 203804

Messrs <PT Matic Environmental Services Ltd>

Dear Sir/Madam,

Re: Supply of <NEGOTIATED PROCEDURE FOR THE CLINICAL WASTE FOR END DISPOSAL TO MDH>

Thank you for participating in the above-mentioned procurement procedure. However, this Entity regrets to inform you that the procurement proposal submitted by your company was not financially compliant. The main reason/s why your procurement proposal was non-compliant is/are as follows:

Reason for Rejection: Although your offer is Eligibility compliant, technically compliant and within estimated budget, it is not the cheapest offer financially.

The procurement was recommended for award to Messrs <Green Skip Services Ltd> for the amount of [€200,850.00c] excluding VAT, this being the cheapest priced offer satisfying the administrative and technical criteria.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case must be lodged electronically with the Public Contracts Review Board, by sending an email on: info.pcrb@gov.mt by noon of Monday, 29th January, 2024 against a deposit as stipulated in the published schedule.

Payments are to be made through bank transfer in terms of the following details:

Name of Account Holder	Cashier Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Castille Place, Valletta	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

The official 'recommendation for award' schedule can be accessed on the website: www.etenders.gov.mt. In addition, the said schedule can also be accessed on the CPSU website.



Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely

<Trevor Attard>
f/Evaluation Committee



Bank of Valletta p.l.c
 Registration Number: C 2833
 Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

Authorise

Printed by: Ms. Sarah Grech
 Printed on: 29/01/2024 - 09:31
 Document ID: 18884227

Pay third party

Transaction details

Transaction:	Pay third party
Beneficiary name:	Cashier Malta Government
Relation:	Retail
Reason:	Purchase of Services
Payment details:	CFT 10766116 CFT CA Unique ID CPSU 2494 23Tender ID 203804
Currency:	EUR - Euro
Beneficiary IBAN/Account:	MT55MALT011000040001EURCMG5001H
Beneficiary IBAN/Account type:	Valid IBAN of country - Malta
Bank name:	Other bank
Bank address / Bank's BIC:	Let the bank apply the beneficiary bank BIC
Beneficiary address:	No
Withdraw from account:	4001421761 6 (EUR)
Charges should be paid by:	Shared - I pay BOV charges; Cashier Malta Government pays the beneficiary bank charges
Amount:	EUR 1,090.00
Receiving bank to get the money as:	normal priority payment
To be effected on:	as soon as possible
Credited amount:	EUR 1,090.00
Debited amount (excluding charges):	EUR 1,090.00
Estimated amount to be withdrawn from account:	EUR 1,094.00
Transaction charge:	EUR 4.00
Creator:	Ms. Tiziana Maria Micallef
Authorised by:	Ms. Sarah Grech

Transaction result

Status:	Your instructions have been processed successfully.
Transaction ID:	138061901