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

25th March 2024

RE: CT 2192/2023 – Framework Agreement for the Disposal of Asbestos Containing Material In An Environmentally Friendly Manner From Malta for the Water Services Corporation

I have been instructed by PT Matic Environmental Services Limited (C 17720) having its registered office at Alberta Head Office, San Gwakkin Road, Mriehel, Birkirkara to file this notice of objection on their behalf regarding the decision of the Director General (Contracts) of the 15th of March 2024 wherein my client's offer was found to be unsuccessful since *"the criteria for award of this tender was the cheapest priced offer satisfying the administrative and technical criteria."*

The Director General (Contracts') above-quoted decision further elaborates that *"*[t]*he tender was recommended for award to TID 199662 Edile First Choice Zerafa for the amount of €1,545,525.00 excluding VAT, this being the cheapest priced tender satisfying the administrative and technical criteria."*

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

As per the applicable terms of reference, the works requested by the Contracting Authority and in relation to which a framework agreement would be entered into *"shall comprise the safe removal, **export**, and treatment of Asbestos Containing Material (ACM) in an environmentally friendly manner from sites in Malta as indicated by Water Services."*[1] To this effect, the said tender dossier further clarifies that disposal of Asbestos Containing Material shall be carried out *"at an environmentally authorized landfill site **abroad**"*[2] and *"in accordance with all the procedures approved by the Environment and Resources Authority (ERA) and by the Occupational Health and Safety Authority (OHSA)."*[3]

[1] Tender Document, page 13, section 2.1
[2] Tender Document, page 13, section 2.4
[3] Tender Document, page 13, section 2.2

The Director General (Contracts') decision to award this procurement to the preferred bidder (Edile First Choice Zerafa) – on the basis, hereby vehemently contested, that it has submitted *"the cheapest priced tender 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 disposal of Asbestos Containing Material *"at an environmentally authorized landfill site abroad"*, 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.

It goes without saying that evaluations cannot be undertaken in isolation of Contracting Authorities' 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-sejħa, **u mhux jiddeċiedi li jagħżel liema li jidhirlu li hi l-aħjar offerta**."*

Regrettably, the Director General (Contracts') decision 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 attain the final objectives of this procurement procedure, namely the disposal of Asbestos Containing Material *"at an environmentally authorized landfill site abroad"*. This in view of the fact that the preferred bidder does not possess, and is not expected to possess at any time in the foreseeable future (in the absence of a request to this effect), an export permit validly issued by the competent Authority to export the hazardous material to which this tender relates.

The appellant company, which ironically is the **only** company currently in possession of a valid export permit for Asbestos Containing Material issued by the competent Authority (all permit holders may be viewed on the Environment and Resources Authority's website), 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 *"[a]n active ERA TFS permit for the export of asbestos containing material."*[4] It remains unexplained, therefore, how the Director General (Contracts), with the information available to it (or lack thereof), proceeded nonetheless to award a contract for the disposal – **by way of export** – of Asbestos Containing Material to a bidder which does not possess (nor is expected to possess in the near future) an export permit over another bidder (the appellant company) which is the **only** company in possession of a valid export permit.

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 preferred bidder's offer was evaluated from a strictly monetary perspective, doing away with everything else, including the procurement procedure's ultimate objectives. This arbitrary and unjustified departure from the unequivocal text of the tender document does not only run counter to the core principles in public procurement but also cause significant prejudice to the appellant – more so considering that the administrative, technical and financial compliance of its offer, as opposed to that of the preferred bidder, is undoubted.

Wherefore, my client objects to the decision taken by the Director General (Contracts) of the 15th of March 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 the Director General (Contracts) of the 15th of March 2024;
ii) to declare Edile First Choice Zerafa's offer 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 €10,017 representing the deposit requested in connection with the filing of this objection/appeal has been affected.

With costs.

Dr. Ryan C. Pace

[4] Tender Document, page 15, section 4.2

DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN 1600 – MALTA

DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN 1600 – MALTA

Contact Number: +356 2378 1001
e-Mail: info.contracts@gov.mt
website: www.contracts.gov.mt

15th March 2024

PT MATIC ENVIRONMENTAL SERVICES LIMITED
TID 199494

REFERENCE: **CT 2192/2023**

SUBJECT: **Framework Agreement for the Disposal of Asbestos Containing Material In An Environmentally Friendly Manner From Malta for the Water Services Corporation**

Dear Sir/Madam,

Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the tender submitted by your company was not successful since the criteria for award of this tender was the cheapest priced offer satisfying the administrative and technical criteria.

The tender was recommended for award to TID 199662 Edile First Choice Zerafa for the amount of €1,545,525.00 excluding VAT, this being the cheapest priced tender 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 has to be lodged electronically with the Public Contracts Review Board by sending an email on: *info.pcrb@gov.mt* by noon of Monday 25th March 2024 against a deposit of €10,017.00.

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
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

The official schedule can be accessed on the website: *www.etenders.gov.mt.*

DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN 1600 – MALTA

DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN 1600 – MALTA

Contact Number: 1356 2378 1001
e-Mail: info.contracts@gov.mt
website: www.contracts.gov.mt

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,

Joseph Anthony Zammit

f/ Director General (Contracts)

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: 21/03/2024 - 09:53
Document ID: 19487582

Pay third party

Transaction details

Transaction:	Pay third party
Beneficiary name:	Cashier Malta Government
Relation:	Financial Services
Reason:	Professional Fees
Payment details:	CFT 10408044, CfT CA Unique ID CT2192/2023
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 10,017.00
Receiving bank to get the money as:	normal priority payment
To be effected on:	as soon as possible
Credited amount:	EUR 10,017.00
Debited amount (excluding charges):	EUR 10,017.00
Estimated amount to be withdrawn from account:	EUR 10,021.00
Transaction charge:	EUR 4.00
Creator:	Ms. Christina Bonett
Authorised by:	Ms. Sarah Grech

Transaction result

Status:	Your instructions have been processed successfully.
Transaction ID:	140310554