

4th April, 2024

Chairman
Public Contracts Review Board
Notre Dame Ditch
Floriana, FRN 1601



Dear Sir,

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

By means of this present we are hereby filing the Reasoned Letter of Reply for and on behalf of the Water Services Corporation, as the contracting authority publishing the captioned tender (hereinafter referred to as the 'Contracting Authority'), with reference and in response to the letter filed on the 25th March, 2024 (hereinafter referred to as the '**Objection Letter**') by PT Matic Environmental Services Limited (C 17720) (hereinafter referred to as the '**Appellant**') in relation to the captioned tender.

By means of the Objection Letter the Appellant contested the reason for rejection whereby the tender was recommended for award to Edile First Choice Zerafa, being the cheapest priced offer satisfying the administrative and technical criteria at €1,545,525. The reason for appeal seems to be one and therefore 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.”¹

The Appellant further states that in view of this the objectives of the tender cannot be achieved.

In this regard, by way of reply, the Contracting Authority humbly submits the following:

1. The Contracting Authority is not in contestation that the Appellant may be the only economic operator with a valid licence as requested in terms of section 5(B)(a)(ii) of the Tender Dossier. However **the tender permitted that a bidder may be allowed to obtain such a licence within a period of three months from being awarded the contract should a declaration in this regard be made.** Reference is made to section 5(B)(a)(ii) of the tender document – Suitability for Selection and Award Requirements.

(ii) Economic operators shall have an active ERA TFS permit for the export of the asbestos containing material mentioned in Section 3 – Terms of Reference.

To this effect, economic operators must:

Either: upload a copy of a valid ERA TFS permit for the export of the asbestos containing material;

Or: declare that he/she will be obtaining such a permit within three (3) months from the awarding of the contract.

This information is to be submitted online through the prescribed Tender Response

Format and by using the Tender Preparation Tool provided. (Note 2) (Emphasis added).

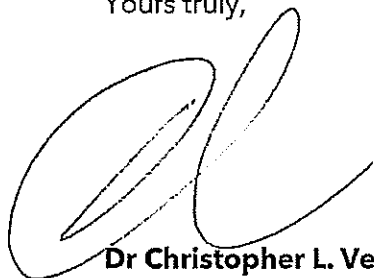
¹ Objection letter, p.2

2. It is evident that in the Objection Letter, the Appellant very conveniently did not mention or in any manner make reference to this requirement from the tender dossier. In fact the awarded bidder did include a declaration stating that a permit will be obtained within 3 months from the awarding of the contract. In view of this, the Evaluation Committee was sufficiently satisfied with the declaration made. This also permits that the objectives of the contract may be achieved.
3. In view of this it is wholly unfounded, the allegation that the Evaluation Committee somehow overlooked that the Appellant is the only economic operator with a valid licence. It is being submitted that the possession of such licence was not the only requirement. In fact the aim behind this public procurement process was indeed to act in a very fair and equal manner and not be discriminatory in this regard by issuing a tender where only one economic operator may submit his bid i.e. the Appellant. The inclusion of a requirement for economic operator with such a licence would have resulted in such discriminatory outcome. The principles of public procurement prohibit this.
4. In fact the awarded bidder provided a declaration as requested. This sufficiently satisfied the administrative and technical requirements of the tender which did not require that such a licence is in hand at the time of submission.
5. Without prejudice to the above, the Contracting Authority is not in agreement with the statement made by the Appellant in the Objection letter that the awarded bidder is not expected to possess at any time in the foreseeable future an export permit validly issued. The Authority considers that the period of three months is sufficient period to obtain such permit.

On the basis of the foregoing, my client contends that the Public Contracts Review Board should find against the appellant and confirm the decision of the Contracting Authority.

Whilst thanking you for your kind attention, I remain,

Yours truly,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by 'L. Vella'.

Dr Christopher L. Vella

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