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A D V O C A T E

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Public Contracts Review Board
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30th November 2020

Notice of objection regarding service tender bearing reference number CT2262/2020 relating to the “Management of Asbestos Containing Waste (including the Provision of Asbestos Containers and Air Monitoring) from WasteServ Sites”.

I have been instructed by P.T. Matic Environmental Services Limited (C 17720) having its registered office at Alberta Head Office, San Gwakkinn Road, Mrieħel, Birkirkara to file this notice of objection on their behalf regarding the decision of the Director General (Contracts) of the 20th of November 2020 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 appellant company feels highly aggrieved by the abovestated decision and is resultantly filing the present objection/appeal for the reasons outlined hereunder.

To begin with, the financial, administrative and technical compliance of the appellant company is undoubted.

As per the applicable tender document, “[t]he contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria.” The successful award of this service tender, therefore, hinges on the attainment of these three **cumulative** criteria: i) cheapest price; ii) administrative compliance; and iii) technical compliance.

The Director General (Contracts), in his decision of the 20th November 2020, concluded – incorrectly and erroneously – as follows:

*The tender was recommended for award to TID138205 M-Stream Ltd for the amount of €329,400.00 excluding VAT, **this being the cheapest priced tender satisfying the administrative and technical criteria.***

Factually, the offer submitted by the preferred bidder was not, in strict financial terms, the cheapest priced. The abovequoted excerpt therefore suggests (as this does not in any way transpire from the decision hereby objected) that the cheapest priced tenderer – a third party company – must have been deemed administratively and/or technically non-compliant.

The decision of the Director General (Contracts) to award this service tender to M-Stream Limited is consequently two-fold: i) deciding against awarding tender to the cheapest bidder on account of (**most plausible assumption**) administrative and/or technical non-compliance; and ii) decision to award tender to preferred bidder. It is this latter decision (the decision to award tender to preferred bidder) which is being vehemently contested by virtue of this appeal.

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 pronounced itself as follows:

*Il-prinċipju ta' trasparenza jrid li l-Kumitat ta' evalwazzjoni jimxi mad-dettalji tekniċi kif imniżżla fid-dokument tas-sejħa, **u mhux jiddeċiedi li jaqżżel liema li jidhirlu li hi l-aħjar offerta.***

The appellant company respectfully but firmly submits that Evaluation Committees shall, at all times, be bound by the terms and conditions outlined in the applicable tender document and decisions reached by the same shall be strictly and entirely within the parameters specifically prescribed. Evaluation Committees must shy away from superficial analysis and shall, instead, consistently and scrupulously delve in detail into the core of any matter subject to its scrutiny, all the more so when the subject matter – as is the case with this particular tender – may pose significant hazards to human health if not managed/evaluated appropriately. All this to avoid incorrect and erroneous decisions.

Regrettably, the decision of the Director General (Contracts) of the 20th of November 2020 attests to an evaluation process which did not match the level of scrutiny one would reasonably expect when dealing with such sensitive and delicate matters. Appellant company maintains that had the evaluation process not been piecemeal and undertaken within the parameters prescribed in the relative tender document – and to which the Director General (Contracts) is unconditionally bound as per the principle of self-limitation – the same Director General (Contracts) would have most certainly not found sufficient comfort in the preferred bidder's cheap offer to securely and proficiently reach the objectives sought by this present service tender.

Wherefore, my client objects to the decision taken by the Director General (Contracts) on the 20th of November 2020 as per above and respectfully requests the Board to accede to this objection/appeal and find in favour of the appellant company

in that it shall reverse said decision, reintegrating P.T. Matic Environmental Services Limited in the tendering process and subsequently upholding P.T. Matic Environmental Services Limited's bid as the preferred bid and thus awarding the tender to appellant company. My client also respectfully requests the Board to recommend the refund of the deposit being paid hereon.

Finally, a bank transfer of €2,347 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 "R. Pace", written in a cursive style.

Dr. Ryan C. Pace