



Date: 6<sup>th</sup> December 2020

The Chairman,  
Public Contracts Review Board  
[info.pcrb@gov.mt](mailto:info.pcrb@gov.mt)

Dear Mr Chairman,

**Re: Notice of objection regarding service tender bearing reference number CT2262 relating to the "Management of Asbestos Containing Waste (Including the Provision of Asbestos Containers and Air Monitoring) from Wasteserv Sites.**

I act on behalf of Wasteserv Malta Limited (Respondent) in connection with the Notice of Objection in caption and hereon submit the Reasoned Letter of Reply requested by the Secretary of the Public Contracts Review Board.

The Appellant makes the following submissions;

1. As per the applicable tender document, "the 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.
2. 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.



*Advocates*

6, Vjal il-Helsien, Haz-Zebbug, Malta.  
Tel/Fax: (+356) 21465423

---

In respect of (1) it must be emphasised from the outset that the iter of the process is that, firstly, the tender must be evaluated "administratively", then "technically" and lastly, if the offer passes the first two tests, the committee will evaluate whether it is the "cheapest offer".

Indeed the "Standard Operating Procedures (SoP), Guidelines for Tender Evaluation Committees (TEC)", Version 1.2 (August 2020), Department of Contracts, specifically provide at article 2.16 that "2.16 The Evaluation Process shall proceed in the following three (3) sequential stages:

- Administrative Evaluation
- Technical Evaluation
- Financial Evaluation"

Note the word "sequential". Hence the claim by the Appellant that the three above mentioned criteria are "cumulative" is erroneous and misleading. On the contrary had the Evaluation Committee considered the criteria aforementioned cumulatively, as suggested by the Appellant, it would have failed to properly scrutinize the offers, which is the Appellant's second basis of complaint.

Also, reference is made to article 1, clause 6.1, of the tender document which provides unequivocally that "the sole award criterion will be the price".

In respect of (2), Appellant goes into some length to charge the Evaluation Committee with shortcomings during the process which amount to , in effect, a dereliction of duty, in that it contends that the committee failed to "match the level of scrutiny one would reasonably expect when dealing with such sensitive and delicate matters" and that the evaluation made was "piecemeal" and not undertaken "within the parameters prescribed in the relative tender document....."

It is to be noted that Appellant has not provided any reasons why it is making these claims.

The respondent strongly repudiates these charges in that they are most clearly vexatious and gratuitous. Indeed, nowhere in his submission has the Appellant supported his claims with any form of evidence to demonstrate how the Respondent failed in its scrutiny and why its assessment was piecemeal and not in accordance with the terms and conditions of the tender document. The Respondent is unable to defend itself from such claims unless and until they are amply substantiated.

---

Dr. Gavin Gulia LL.D. M.P.  
*Mobile:* 79422916  
*E-mail:* gavin.gulia@gov.mt  
*Website:* gavingulia.com

Dr. Luciano Busuttil B.A. LL.D.  
*Mobile:* 79445818  
*E-mail:* lucio74@onvol.net

F.L. Peter Sammut L.P.  
*Mobile:* 79454904



*Advocates*

6, Vjal il-Helsien, Haz-Zebbug, Malta.  
Tel/Fax: (+356) 21465423

---

On the basis of the above my client respectfully requests that the Board rejects the appeal.

Dr Gavin Gulia LL.D.

---

Dr. Gavin Gulia LL.D. M.P.  
*Mobil:* 79422916  
*E-mail:* gavin.gulia@gov.mt  
*Website:* gavingulia.com

Dr. Luciano Busuttil B.A. LL.D.  
*Mobil:* 79445818  
*E-mail:* lucio74@onvol.net

P.L. Peter Sammut L.P.  
*Mobil:* 79454904