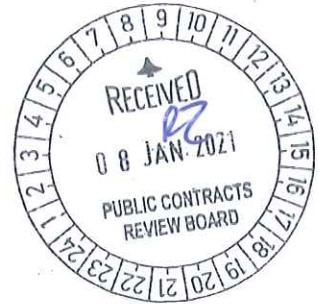


**Dr. Ryan C. Pace LL.B., LL.D.**

**A D V O C A T E**

53/3, Strait Street, Valletta



Public Contracts Review Board  
info.pcrb@gov.mt

8<sup>th</sup> January 2021

**Notice of objection regarding tender bearing reference number MIP/TQF/GEN/D15/19 relating to the "Removal and Disposal of Asbestos Contaminated Material in Marsa and Hal Far Industrial Estates".**

I have been instructed by PT Matic Environmental Services Limited (C 17720) having its registered office at Alberta Head Office, San Gwakkinn Road, Mriehel, Birkirkara to file this notice of objection on their behalf regarding the decision of INDIS Malta Limited of the 28<sup>th</sup> of December 2020 wherein my client's procurement proposal was found to be unsuccessful since it "was not 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 following excerpt extracted from the decision subject to this objection/appeal, INDIS Malta Limited endorsed/approved the Evaluation Committee's final recommendation:

*The procurement was recommended for award to DDE Attard Ltd. (C4938) (offer ID 142568) for the amount of €88,000 excluding VAT, this being the cheapest priced offer satisfying the administrative and technical criteria.*

In procurement, it is broadly accepted that the guiding principles underlying all evaluation processes are fairness and transparency. To this effect, Evaluation Committees are bound to ensure that these principles are upheld throughout adjudication and that they are mirrored in all recommendations made. All this by remaining devotedly faithful to the terms and conditions of the applicable tender document in accordance with the principle of self-limitation. In a judgment delivered on the 24<sup>th</sup> 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:

*Il-principju ta' trasparenza jrid li l-Kumitat ta' evalwazzjoni jimxi mad-dettalji tekniċi kif imniżżala fid-dokument tas-sejha, u mhux jiddeċiedi li jaqgħzel liema li jidhirlu li hi l-aħjar offerta.*

INDIS Malta Limited's decision to endorse/approve the Evaluation Committee's final recommendation to award this tender to the preferred bidder attests to an incomplete and unfair evaluation process – one in which selected requirements, specifications and/or conditions specifically listed in the applicable tender document were – possibly inadvertently – arbitrarily discarded by the Evaluation Committee, this leading to an incorrect and erroneous decision.

Reason being that the relative tender document expressly requested, as one of its selection and award requirements and in partial fulfilment of the submitted financial offer, a filled-in Bill of Quantities “as per document available to download online from [www.etenders.gov.mt](http://www.etenders.gov.mt)”<sup>1</sup> (attached for ease of reference). The provided Bill of Quantities was meant to “be read with all the other contract documents and the Contractor shall be deemed to have thoroughly acquainted himself with the detailed descriptions of the works to be done and the way in which they are to be carried out.”<sup>2</sup>

In view of the nature of the hazardous waste for which INDIS Malta Limited sought the removal and disposal thereof, and in order to securely carry out said removal and disposal, the Bill of Quantities “as per document available to download online from [www.etenders.gov.mt](http://www.etenders.gov.mt)” – which formed an integral part of the tender document and to which the Evaluation Committee is legally bound – requested the submission of specific documentation (listed from [i] to [vii]), the failure of which would have been sufficient grounds for non-compliance.

Shockingly, albeit possibly inadvertently, the Evaluation Committee (as later endorsed/approved by INDIS Malta Limited) noticeably evaluated the submitted Bills of Quantities from a strictly monetary perspective, determining solely the cheapest priced offer while completely doing away with the list of documentation (most of which are essential to attaining the objectives of this tender) specifically requested in the applicable tender document. 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 appellant company – more so considering that the administrative, technical and financial compliance of PT Matic Environmental Services Limited is undoubted.

Appellant company would have reasonably expected INDIS Malta Limited to rectify, *di sua sponte*, its blatant shortcomings by immediately withdrawing its decision of the

<sup>1</sup> Tender Document, page 5, point (D) (ii)

<sup>2</sup> Tender Document, page 24, preamble (emphasis added)

28<sup>th</sup> of December 2020 without the need for my client to file this notice of objection/appeal and incur unnecessary costs. To this end, reference is made to the Constitutional Court judgment delivered on the 12<sup>th</sup> of January 2011 in the names of **Stephen Schembri v. L-Avukat Ġenerali** whereby it was pronounced:


*Din il-Qorti tifhem li l-Avukat Ġenerali, l-odjern appellant, għandu fost idem dmirijiet tiegħu dak li jkun il-gwardjan tal-osservanza tal-liġijiet tal-pajjiż, u li għandu jara għalhekk li dawn ma jgux mittiefsa darba li huma fis-siġġir, iżda, min-naħa l-oħra, meta ċ-ċirkostanzi ta' fatt ikunu tali li jistgħu jwasslu biex issir inġustizzja manifesta (bħalma kien ser jgħri proprju fil-każ ta' diżamina), huwa għandu jkun għaqli biżżejjed biex jara li haqa bħal din ma ssirx u mhux jibqa' jinsisti fuq binarju li jkun evidentement żbaljat u b'konsegwenzi evidentement f'żiana.*

Thus, in the absence of adequate and timely remedial actions by INDIS Malta Limited, it is now the remit of this Revisory Board to ensure that injustice is not perpetrated and to preclude INDIS Malta Limited from persisting "fuq binarju li jkun evidentement żbaljat u b'konsegwenzi evidentement f'żiana."

Wherefore, my client objects to the decision taken by INDIS Malta Limited on the 28<sup>th</sup> of December 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 PT Matic Environmental Services Limited in the tendering process and subsequently upholding PT Matic Environmental Services Limited's procurement proposal as the preferred bid and thus awarding the tender to the appellant company. My client also respectfully requests the Board to order the reimbursement of the deposit being paid hereon.

Finally, a bank transfer of €676 representing the deposit requested in connection with the filing of this objection/appeal has been affected.

With costs.



Dr. Ryan C. Pace



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

## Authorise

Printed by: Mr. Randall Schembri  
 Printed on: 06/01/2021 - 10:42  
 Document ID: 7393350

### Pay third party

### Transaction details

Transaction: Pay third party

Beneficiary name: Cashier Malta Government

Relation: Administrative Services

Reason: Other

Payment details: Objection

Currency: EUR - Euro

Deposit to account: MT55MALT011000040001EURCMG5001H

Beneficiary 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: Yes

Address line 1: Indis Malta Ltd

Address line 2: 88, Valley Road

City: Birkirkara

Postcode: BKR0000

Country: Malta

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 676.00

Receiving bank to get the money as: same-day priority payment

To be effected on: as soon as possible

Credited amount: EUR 676.00

Debited amount (excluding charges): EUR 676.00

Estimated amount to be withdrawn from account: EUR 684.00

Transaction charge: EUR 8.00

Creator: Ms. Sarah Grech

Authorised by: Mr. Randall Schembri

### Transaction result

Status: Your instructions have been processed successfully.

Transaction ID: 98108394



28<sup>th</sup> December 2020

PT Matic Environmental Services Ltd  
Alberta Head Office,  
Triq San Gwakkin,  
Mriehel Industrial Zone  
Mriehel

**SUBJECT: MIP/TQF/GEN/D15/19 – TENDER FOR THE REMOVAL AND DISPOSAL OF ASBESTOS CONTAMINATED MATERIAL IN MARSA AND HAL FAR INDUSTRIAL ESTATES**

Dear Sir,

Thank you for participating in the above-mentioned tender procedure. However, INDIS Malta Ltd regrets to inform you that the procurement proposal submitted by your company was not the cheapest priced offer satisfying the administrative and technical criteria.

The procurement was recommended for award to DDE Attard Ltd. (C4938) (offer ID 142568) for the amount of €88,000 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 has to be lodged electronically with the Public Contracts Review Board, by sending an email on: [info.pcrb@gov.mt](mailto:info.pcrb@gov.mt) by noon Friday 8<sup>th</sup> January 2021 against a deposit of €676.

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 'recommendation for award' schedule can be accessed on the website: [www.etenders.gov.mt](http://www.etenders.gov.mt)

Although this INDIS Malta Ltd has not been able to make use of your services on this occasion, we trust that you will continue to take an active interest in its procurement opportunities.

Yours sincerely,



**Dorian Bugeja**

*Executive, Procurement & Tendering*

BILL OF QUANTITIES



Ref. No.: MIP/TQF/GEN/D15/19

Title : General Tender for the Removal and Disposal of Asbestos Contaminated Material in Marsa and Hal Far Industrial Estates.

Item No.	Description	QTY	Unit	Rate exclusive of VAT but including all other Taxes and charges / €	Amount exclusive of VAT but Including all other Taxes and charges / €
i.	<i>The below Items are to include the sealing of buildings, all necessary chasing, the cleaning of site, and the complete removal of any asbestos traces such as dust and debris, the disposal is to be made in an approved dumping site. Allowance is also to be made for any costs not already included in the BOQ, arising from the tenderers obligations to adhere the conditions for the handling of asbestos as stipulated in LN.323/2006. No claims will be considered afterwards.</i>				
ii.	<i>The economic operator must present a copy of a valid and active ERA TFS permit for the export of asbestos waste, with the financial bid.</i>				
iii.	<i>The economic operator must present a copy of a valid waste carrier permit from ERA for the transportation of asbestos waste.</i>				
iv.	<i>The economic operator must present a copy of their part liability and employer's liability insurance on asbestos removal works.</i>				
v.	<i>The economic operator must submit training certificates for Environmental Technicians in asbestos removal and registered with the OHSa and submit certificates of training for the same technicians.</i>				
vi.	<i>The economic operator must draw up the necessary plan of works and risk assessment to be approved by the OHSa prior to commencement of works.</i>				
vii.	<i>The contractor must assign an ACM handling expert registered with OHSa who is in possession of a professional indemnity insurance cover on asbestos surveying and removal works. Copy of such insurance is to be submitted with the tender bid.</i>				

1.01	Carefully remove asbestos drain pipes from walls including tees, elbows and hoppers.	205.00	m	120.00	€ 24,600.0
1.02	Carefully remove existing Fibre Cement Asbestos roof sheeting , load and cart away from site, to an approved dumping site.	260.00	Sq.m	80.00	€ 20,800.0
1.03	Carefully remove the existing asbestos suspended false ceiling and cart away material from site as specified above. Rate to include the sealing off of the building.	260.00	Sq.m	105.00	€ 27,300.0
1.04	Extra over item 1.03, for the removal of metal frame from ceiling, load and cart away	125.00	Sq.m	45.00	€ 5,625.0
1.05	Extra over item 1.03, for the removal of rockwool insulation from ceiling, load and cart away	125.00	Sq.m	60.00	€ 7,500.0
1.06	Carefully remove the existing asbestos wall panels , load and cart away from site as specified above. Rate to include for sealing off building.Allow for any costs and charges for the disposal of asbestoscontaining material and any other related costs. No claims will be considered afterwards.	165.00	Sq.m	90.00	€ 14,850.0
1.07	Extra over item 1.06, for the removal of metal frame from wall, load and cart away	65.00	Sq.m	45.00	€ 2,925.0
1.08	Extra over item 1.06, for the removal of rockwool insulation from wall, load and cart away	65.00	Sq.m	60.00	€ 3,900.0
1.09	Carefully remove any asbestos water cisterns found on site:				
a	Small water cistern (less than 750l)	13.00	No.	650.00	€ 8,450.0
b	Large water cistern (larger than but including 750l)	8.00	No.	1050.00	€ 8,400.0
2.00	Mobilisation Rates:				
	<i>Mobilisation rates of plant, equipment and other resources required for performing the requested works for each particular location.</i>				
	<i>The mobilisation rate shall only be due when the Contractor is directed by MIP to perform jobs amounting up to €1,000.00</i>				
2.01	Marsa Industrial Estate	5.00	No.	900.00	€ 4,500.0
2.02	Hal Far Industrial Estate	5.00	No.	900.00	€ 4,500.0
<b>GRAND TOTAL EXCL VAT *</b>					<b>€ 133,350.00</b>

