



**Investigation on Alleged Irregularities regarding the Sant' Antnin
Waste Plant in Marsascala**

Tender issued by WasteServ Malta Ltd

Report by the Auditor General

September 2009

Contents

Page No.

Executive Summary.....	2
List of Abbreviations.....	4
A. Introduction	
1. Background	
1.1 Tender Issue.....	5
1.2 Awarding of Tender.....	5
1.3 Approval of Variation Order.....	5
1.4 Preparation of Environmental Impact Statement.....	6
2. Scope of the Investigation.....	6
B. Observations	
1. Payments to SLR Consulting Ltd	
1.1 Awarded Tender amount	8
1.2 Variation Order.....	8
1.3 Payment of Value Added Tax on Contract.....	8
2. Baseline Reports required as set out in the Terms of Reference	
2.1 Analysis of SLR Consulting Ltd’s Schedule of Rates in Tender offer.....	9
2.1.1 Report on “Rodents”.....	10
2.1.2 Report on “Land Contamination”.....	10
2.2 Other Baseline Reports.....	10
C. Conclusions and Recommendations.....	11

Executive Summary

WasteServ Malta Ltd issued a tender on 7 October 2003 for the preparation of an Environmental Impact Assessment for the proposed improvement of the Sant' Antnin Composting Plant and Materials Recovery Facility. The tender was awarded to SLR Consulting Limited, an international consulting company based in the United Kingdom, at a cost of Lm86,620 (€201,770.32), having the Agreement signed on 7 April 2004. A variation order of Lm15,250 (€35,522.94) was approved by the General Contracts Committee for additional studies to amend the already compiled Environmental Impact Statement. The final statement issued in June 2005 was certified by the Malta Environment and Planning Authority on 11 July 2005.

During a meeting of the Public Accounts Committee held on 25 March 2009, the Chairman, Hon. Dr. C. Mangion, brought to the attention of the Committee a letter sent by Member of Parliament Hon. O. Bonnici entitled 'Sejha għall-offerti: L-Impjant ta' Sant' Antnin,' highlighting a number of alleged irregularities concerning five baseline studies that allegedly were not carried out by SLR Consulting Ltd, even though these formed part of the terms of reference. The letter also mentioned that SLR Consulting Ltd had been paid the full amount quoted in its tender, notwithstanding the fact that these reports were not prepared. Other allegations of a technical nature, questioning the development of the Sant' Antnin Plant, were also made.

On 26 March 2009, the Public Accounts Committee officially requested the Auditor General to investigate the allegations made. By means of a letter to the Public Accounts Committee dated 13 May 2009, the National Audit Office pointed out that it had concerns of an ethical nature, in view of pending proceedings before the Malta Environment and Planning Authority Appeals Board and the First Hall of the Civil Court. Furthermore, the National Audit Office expressed the concern to assess the propriety of certain reports from a technical aspect. In this respect, the National Audit Office addressed the issue of payments effected to SLR Consulting Ltd against the:

- terms of reference as set out in the tender document;
- SLR Consulting Ltd's response to the call for tender; and
- the Environmental Impact Statement delivered by SLR Consulting Ltd.

It is pertinent to point out that the investigation was conducted solely from a financial and compliance aspect, with particular reference to the allegations raised in the letter received from Hon. O. Bonnici in the context of the three points listed above. The results of the investigation are summarised below:

1. SLR Consulting Ltd did not present the '*Land Contamination*' report, the quoted price of which was Lm800 (€1,863.50). Another report concerning the '*Marine Environment*' which was not included as part of the revised Terms of Reference, was also not produced. SLR Consulting Ltd had quoted a price of Lm1,000 (€2,329.27) for this report. Given that SLR Consulting Ltd was paid the full tender amount, the National Audit Office concluded that the company was paid for these reports notwithstanding the fact that such reports were not included in the Environmental Impact Statement.
2. Two reports were produced under Chapters 10 and 14 of the Environmental Impact Statement dealing with '*Highways*' and '*Litter, Pests & Vermin*' respectively. No costings for these reports could be identified in the Schedule of Rates forming part of the tender document submitted by the company. Subsequently, WasteServ paid SLR

Consulting Ltd Lm1,750 (€4,076.40) for the 'Highways' report as part of the variance order.

3. WasteServ failed to make the payment of Value Added Tax on the contract as required by local VAT legislation. The VAT charge, equivalent to 18% of the total tendered value of Lm101,870 (€237,293.27) i.e. Lm15,539.49 (€36,197.28), should have been taken into account when awarding the tender to SLR Consulting Ltd.

Following this investigation, this Office recommends WasteServ Malta Ltd to:

- (i) request SLR Consulting Ltd to refund the amount of Lm1,800 (€4,192.87); and
- (ii) regularise its position with the VAT Department.

List of Abbreviations

EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
MEPA	Malta Environment and Planning Authority
NAO	National Audit Office
PAC	Public Accounts Committee
SLR	SLR Consulting Limited
TOR	Terms of Reference
VAT	Value Added Tax
WS	WasteServ Malta Ltd

A. Introduction

1 Background

1.1 Tender Issue

WasteServ Malta Ltd (WS) issued a tender by means of Advert No. WSM/011/2003 in the Malta Government Gazette of 7 October 2003 for the preparation of an Environmental Impact Assessment (EIA) for the proposed improvement of the Sant' Antnin Composting Plant and Materials Recovery Facility. The development of this plant/facility was subject to funding under the EU Cohesion Fund available during the period 2004 – 2006.

The necessary consultancy skills and resources to undertake the project leading to the required EIA were indicated by the Terms of Reference (TOR) prepared by the Malta Environment and Planning Authority (MEPA) in accordance with Regulations 19 and 33 of the EIA Regulations, 2001.

1.2 Awarding of Tender

The tender was awarded to a local consultancy company at a cost of Lm54,931.70 (*€127,956.44 inclusive of all taxes*), by means of a Letter of Intent issued on 19 February 2004. However, following requests by the company which could not be entertained by WS, regarding the requirements as per tender specifications for the provision of a Professional Indemnity Insurance and Public Liability Insurance, apart from changes to the payment schedule as specified in the tender, it was decided to withdraw the Letter of Intent issued to the company.

The tender was subsequently awarded to SLR Consulting Limited (SLR), an international consulting company based in the United Kingdom, at a cost of Lm86,620 (*€201,770.32*). The Letter of Intent was issued to SLR on 26 March 2004, presumably followed by the Letter of Acceptance¹. The Memorandum of Agreement between WS and SLR was signed on 7 April 2004. On 19 July 2004, MEPA amended the TOR for the preparation of the EIA in accordance with Regulation 19 of the EIA Regulations. The revised TOR superseded those issued with the tender document in October 2003.

1.3 Approval of Variation Order

The General Contracts Committee approved a variation order of Lm15,250 (*€35,522.94*), following a request by WS on 14 April 2005 for the approval of additional studies to amend the already compiled Environmental Impact Statement (EIS). The amended EIS was to take into consideration the actual throughput of the plant of 71,000 tonnes *per annum* as against the throughput of 200,000 tonnes *per annum* on which the draft EIS was based, in accordance with the original tender requirements. Details are provided overleaf:

¹The copy of the Letter of Acceptance obtained from WS was dated 6 April 2003.

Title of Sections in EIS	Lm	€
Project Description	3,000.00	6,988.12
Need and Alternatives	1,000.00	2,329.37
Highways	1,750.00	4,076.40
Air Quality	2,750.00	6,405.78
Landscape and Visual Impact	2,500.00	5,823.43
Noise	1,250.00	2,911.72
Other Sections and NTS	3,000.00	6,988.12
Total	15,250.00	35,522.94

1.4 Preparation of Environmental Impact Statement

SLR issued the final draft of the EIS during June 2005. The document was accepted by MEPA on 11 July 2005 and certified in accordance with Regulation 24(2) of the EIA Regulations, 2001. MEPA stated that “*The EIS satisfactorily complies with and adequately meets the terms of reference.*”

2 Scope of the Investigation

During a meeting of the Public Accounts Committee (PAC) held on 25 March 2009, the Hon. Dr. C. Mangion, Chairman of the PAC, brought to the attention of the Committee a letter sent by Member of Parliament Hon. O. Bonnici dated 27 February 2009. This letter entitled ‘Sejha għall-offerti: L-Impjant ta’ Sant’ Antnin,’ highlighted a number of alleged irregularities concerning the following five baseline studies that allegedly were not carried out by SLR, even though these formed part of the TOR:

1. **Noise (TOR Section 4.9):** Information of the prevailing background noise levels.
2. Existing **air quality** and micro-meteorology of the area (**TOR Section 4.10**): The current background levels of pollution. Details on prevailing wind and climate conditions shall also be included, amongst other relevant parameters.
3. An assessment of current levels of **odours and dust (TOR Section 4.11)**: an odour panel should be considered.
4. Existing **rodent population** around the site (**TOR Section 4.12**).
5. **Land Contamination (TOR Section 4.13)**: The existing level of contamination of the site shall be investigated².

The letter also mentioned that SLR had been paid the full amount quoted in its tender, notwithstanding the fact that these reports were not prepared. Other allegations of a technical nature, questioning the development of the Sant’ Antnin Plant, were also made.

²The above Terms of Reference referred to are those issued with the original Tender document dated October 2003.

A Parliamentary Question (No. 7013) on this subject was previously raised by Hon. O. Bonnici during the Parliamentary Sitting of 10 March 2009. The Prime Minister replied during the Parliamentary Sitting held on 23 March 2009, stating that the baseline studies mentioned were incorporated as an integral part of the different chapters of the EIS. According to this reply, all reports, except the one dealing with 'Contamination,' had been dealt with in the EIS.

The PAC unanimously agreed to forward Hon. O. Bonnici's letter to the Auditor General to investigate the allegations made. The official request for this investigation was sent to the National Audit Office (NAO) on 26 March 2009. By means of a letter to the PAC dated 13 May 2009, NAO pointed out that it had concerns of an ethical nature, in view of pending proceedings before the MEPA Appeals Board and the First Hall of the Civil Court. Furthermore, NAO expressed the concern to assess the propriety of certain reports from a technical aspect.

In view of the above clarifications, NAO addressed the issue of payments effected to SLR against the:

- TOR as set out in the Tender Document;
- SLR's response to the call for Tender; and
- the EIS delivered by SLR.

It is pertinent to point out that the investigation was conducted solely from a financial and compliance aspect, with particular reference to the allegations raised in the letter received from Hon. O. Bonnici in the context of the three points listed above.

B. Observations

1. Payments to SLR Consulting Ltd

1.1 Awarded Tender amount

The amount of Lm86,620 (€201,770.32) was in fact paid in full in accordance with the Payment Schedule listed in Table 3 under Section 1.17 – Section 1: Instructions to Tenderers, forming part of the Tender document issued in October 2003.

The professional fees and directly related expenses of the appointed consultant were paid as follows:

Description	Payment Allocation	Amount		Payment Date
		Lm	€	
On submission of key baseline studies report	15%	4,800.00*	11,180.99	6 August 2004
		8,193.00	19,084.56	12 January 2005
On submission of draft final EIS	35%	30,317.00	70,619.61	12 January 2005
On submission of the final EIS following the public consultation exercise	30%	25,986.00	60,531.10	18 May 2005
On approval by MEPA of all assessments / studies	10%	8,662.00	20,177.03	29 September 2005
After decision by MEPA on development application	10%	8,662.00	20,177.03	12 January 2007

*The first payment issued to SLR was made on 6 August 2004 for the amount of Lm4,800 (€11,180.99). This related to the cost for the Alternative Sites Assessment report issued in July 2004. This amount was subsequently deducted from the first payment due of 15% of the total tender amount.

1.2 Variation Order

The variation order to the original tender awarded to SLR amounting to Lm15,250 (€35,522.94), as approved by the General Contracts Committee, was also paid to SLR in full on 29 September 2005.

1.3 Payment of Value Added Tax (VAT) on Contract

SLR's bidding offer amounted to Lm86,620 (€201,770.32) *inclusive of all taxes*. In the letter of Acceptance issued to SLR, the cost of the project was stated as Lm86,620 (€201,770.32), but *'exclusive of taxes.'* Upon enquiry by NAO, WS commented that "...foreign consultants not based in Malta are not obliged to charge VAT locally. Therefore, the contract value as awarded and the tender price as submitted are to be considered as equivalent."

However, in terms of Article 20(2) of the VAT Act, (Cap. 406): *“The payment of the tax on a taxable supply made by a person who is not established in Malta and who is not registered under article 10 to a person established in Malta shall be a liability of the person to whom the supply is made if the supply is - (b) a supply of services made to a taxable person which in terms of the Third Schedule is treated as taking place where the customer is established.”* The Third Schedule of the Act lists consultancy services as services supplied where the customer is established.

As a registered company under Article 11 of the VAT Act, WS is obliged to declare and pay VAT locally on foreign consultancy services acquired, by filling in VAT Form 006/2004 – Payment of VAT on Services taxable in Malta.

Contrary to the above, the Government of Malta did not receive any VAT dues on this tender, since WS erroneously applied the Reverse Charge Mechanism in its VAT Return, resulting in a nil effect on the liability for the payment of VAT. NAO’s conclusion was confirmed by the VAT Department whereby the latter informed this Office that: *“A person registered under Article 11 cannot do the reverse charge since he is precluded by law from claiming refunds of input tax. As a matter of fact, the VAT return for persons registered under Article 11 does not allow for such mechanism.”*

2. Baseline Reports required as set out in the Terms of Reference³

2.1 Analysis of SLR’s Schedule of Rates in Tender offer

Upon submission of its financial offer, SLR provided detailed professional fees and related expenses for the various tasks requested in the TOR. The five reports under contention, listed in the table below, show the following details:

- (i) The cost of each report as per tender submitted and eventually accepted by WS.
- (ii) The relative section in both original TOR and amended TOR to which each report pertains.
- (iii) The additional variance (if any) for each report.
- (iv) The sections that include these reports as published in the EIS prepared by SLR.

Baseline Reports	Tender Document ^a (Lm)	Original TOR (Sections)	Revised TOR (Sections)	Variance ^b (Lm)	EIS (Chapter)
Noise	2,500	4.9	4.8	1,250	12
Air Quality	5,000 ^c	4.10	4.9	2,750	13
Odour & Dust		4.11	4.10	n/a	13
Rodents	no quote	4.12	4.11	n/a	14
Contamination	800	4.13	4.12	n/a	not covered
Total	8,300 (€19,333.80)			4,000 (€9,317.49)	

³ Throughout this investigation reference has been made to the original and amended Terms of Reference, issued with the Tender document in October 2003 and subsequently amended in July 2004.

Notes to Table:

- ^a The cost of these baseline studies were submitted by SLR in its financial offer when submitting its tender document.
- ^b An additional cost of Lm4,000 (€9,317.49) was requested by SLR to amend the 'Noise' and 'Air Quality' reports. This formed part of the Lm15,250 (€35,522.94) variance.
- ^c A single cost of Lm5,000 (€11,646.87) was given for the provision of the 'Air Quality' and 'Odour & Dust' reports. Issues were also tackled together under Chapter 13 of the EIS.

2.1.1 Report on 'Rodents'

SLR did not submit its rates for the 'Rodents' report, even though both original and revised TOR requested this report. This report was produced under Chapter 14 of the EIS entitled 'Litter, Pests & Vermin.'

2.1.2 Report on 'Land Contamination'

The cost of this report was set as Lm800 (€1,863.50). The 'Contamination' report was not produced, thus being non-compliant with what was required by the TOR.

2.2 Other Baseline Reports

The original TOR required a report concerning the 'Marine Environment' as per Section 4.5. SLR had tendered a cost of Lm1,000 (€2,329.27) for such report. However, since the revised TOR removed the need for this report, SLR were not obliged and hence did not present this study as part of the EIS.

Another section entitled 'Highways' was prepared under Chapter 10 in the EIS. No costs were produced for this report in the schedule of rates submitted by SLR. As mentioned earlier, it must be noted however, that SLR requested Lm1,750 (€4,076.40) additional funds for amending this report.

C. Conclusions and Recommendations

NAO focused this investigation on the issue of payments made to SLR. Reference was made to the allegations raised, focusing primarily on the five Baseline Reports mentioned.

The results of the investigation are summarised below:

4. SLR did not present the *'Land Contamination'* report, the quoted price of which was Lm800 (€1,863.50). Another report concerning the *'Marine Environment'* which was not included as part of the revised TOR, was also not produced. SLR had quoted a price of Lm1,000 (€2,329.27) for this report. Given that SLR was paid the full tender amount, NAO concluded that SLR were paid for these reports notwithstanding the fact that such reports were not included in the EIS.
5. It is to be emphasised that two reports were produced under Chapters 10 and 14 of the EIS dealing with *'Highways'* and *'Litter, Pests & Vermin'* respectively. No costings for these reports could be identified in the Schedule of Rates forming part of the tender document submitted by SLR. Subsequently, WS paid SLR an amount of Lm1,750 (€4,076.40) for the *'Highways'* report as part of the Lm15,250 (€35,522.94) variance order.
6. WS failed to make the payment of VAT on the contract as required by local VAT legislation. The VAT charge, equivalent to 18% of the total tendered value of Lm101,870 (€237,293.27) i.e. Lm15,539.49 (€36,197.28), should have been taken into account when awarding the tender to SLR and subsequently deducted from the payment due to SLR.

Following this investigation, NAO recommends WS to:

- (iii) request SLR to refund the amount of Lm1,800 (€4,192.87); and
- (iv) regularise its position with the VAT Department.