

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

8th April 2024

RE: EM 023/23 – Tender for the Cleaning and Waste Disposal, as Part of Decommissioning Works, at the San Luċjan Oil Terminal in Qajjenza

I have been instructed by PT Matic Environmental Services Limited (C 17720) having its registered office at Alberta Head Office, San Gwakkın Road, Mrieħel, Birkirkara to file this notice of objection on their behalf regarding the decision relative to the above captioned tender of the 28th of March 2024 reproduced hereunder:

Message Centre

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Direct Message: Delta eSourcing Notification: EM023/23 - Tender for the Cleaning and Waste Disposal, as Part of Decommissioning Works, at the San Luċjan Oil Terminal In Qajjenza

- Buyer - Supplier

Created Date	To/From:	Subject	Message
28/03/2024 06:31:08	To: sales@ptmatic.com.mt From: cwan.vassallo@enemed.com.mt	Delta eSourcing Notification: EM023/23 - Tender for the Cleaning and Waste Disposal, as Part of Decommissioning Works, at the San Luċjan Oil Terminal in Qajjenza	The EM023/23 - Tender for the Cleaning and Waste Disposal, as Part of Decommissioning Works, at the San Luċjan Oil Terminal in Qajjenza has been awarded by Enemed Co. Ltd. Unfortunately you were unsuccessful in winning this bid. Thank you for submitting a quotation. Should you wish to ask any questions with regards to this list, please do so using the Email Buyer option available within the Quick Call list. Sent to sales@ptmatic.com.mt

The appellant company feels highly aggrieved by the abovestated decision and is resultantly filing the present objection/appeal for the following reasons.

Preliminarily, the communication/notification (reproduced above), by virtue of which the appellant company was informed of its rejection, is incorrect, irregular and in manifest breach of the applicable rules and Regulations.

As per the applicable terms of reference, the Contracting Authority is Petromal Company Limited of Vjal I-Avjazzjoni, Luqa. In fact, the same terms of reference further clarify that Petromal Company Limited is “[t]he final beneficiary who will be responsible for managing the contract”. Yet while reference to Petromal Company Limited, throughout the applicable tender document, is plentiful, it is unclear as to why the communication/notification sent to the appellant company to inform it that it was “unsuccessful in winning this bid”, actually states that the “Tender for the Cleaning and Waste Disposal, as Part of Decommissioning Works, at the San Luċjan Oil Terminal in Qajjenza **has been awarded by Enemed Co. Ltd.**”

The tender document, **which clearly identifies Petromal Company Limited as the Contracting Authority and “final beneficiary” of the contract**, neither refers nor infers any reference to Enemed Company Limited, meaning that the latter company should not have had any involvement whatsoever throughout this procurement, let alone “award” it. Thus, in the eventuality that this is not a mere *lapsus calami*, and it is indeed confirmed that Enemed Company Limited – **which is a separate and distinct legal person with absolutely no ties to Petromal Company Limited** – did in fact have a hand in the evaluation process, and eventual award, of this tender, then it would become inordinately apparent that this procurement procedure is vitiated and severely impaired.

Subsidiarily, and without prejudice to the foregoing, the communication/notification informing the appellant company of its rejection is, in any case, irregular and in manifest breach of the applicable rules and Regulations. To this effect, reference is primarily made to Regulation 272 of the Public Procurement Regulations (S.L. 601.03) which provides as follows:

The communication to each tenderer or candidate concerned of the proposed award or of the cancellation of the call for tenders shall be accompanied by a summary of the relevant reasons relating to the rejection of the tender as set out in regulation 242 or the reasons why the call for tenders is being cancelled after the lapse of the publication period, and by a precise statement of the exact standstill period.

The General Rules Governing Tenders shed light as to what this “summary of the relevant reasons relating to the rejection” and “precise statement of the exact standstill period” shall contain so much so that clause 19.2 elaborates that:

Unsuccessful bidders shall be notified with the outcome of the evaluation process, and will be provided the following information:

- (i) the criteria for award;
- (ii) the name of the successful tenderer;
- (iii) the recommended price of the successful bidder;

- (iv) *the reasons why the tenderer did not meet the technical specifications/notification that the offer was not the cheapest;*
- (v) *in case where the award criteria is linked to the best price quality ratio the contracting authority must inform the economic operator who has submitted an admissible tender of the characteristics and relative advantages of the selected offer (only upon request as per Regulation 242 (2))*
- (vi) *the deadline for filing a notice of objection (appeal);*
- (vii) *the deposit required if lodging an appeal.*

The award criterion for this procurement procedure was the price, such that **“[t]he contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria.”** Thus, in this particular case, any and all unsuccessful bidders should have been notified, in accordance with the provisions of clause 19.2 of the General Rules Governing Tenders, of all information listed in sub-clauses (i), (ii), (iii), (iv), (vi) and (vii). As can be easily confirmed from the communication/notification reproduced herein, none of this mandatory information was provided to the appellant company. All this is then exacerbated by the fact that, according to a schedule of offers made available to all participating economic operators (*vide Doc. ‘A’*), appellant company submitted the **cheapest priced offer**. Oddly enough, however, and for reasons unbeknownst to my client, PT Matic Environmental Services Limited was **still** *“unsuccessful in winning this bid”*.

In not so many words, therefore, the communication/notification which appellant company is seeking to have revoked, regrettably attests to a procurement procedure which is shrouded by shortcomings. But not only. The lack of information deprives the appellant company from adequately, and effectively, exercising its right to object/appeal since the reasons on the basis of which appellant company was *“unsuccessful in winning this bid”* **have not been provided** (as opposed to the provision of vague and ambiguous reasons). Whilst appellant company humbly submits that this reason alone should lead to the revocation of the decision subject to this objection/appeal, it nonetheless reserves its right to produce evidence and/or make further submissions in this regard, with the permission of this Honourable Board.

Without prejudice to the foregoing, and on the merits, the decision to award this procurement procedure to any economic operator other than appellant company points towards an incomplete and non-technical evaluation process – which arbitrarily discarded the objective of this procurement – such that **the scope underpinning this procurement procedure, that is waste disposal, cannot, and will not, be achieved.**

Reference is made to the Standard Operating Procedures issued by the Department of Contracts whereby it is unequivocally provided that the evaluation of technical

offers is ought to be carried out on **all** technical aspects comprising the said offer such that in the eventuality that a prospective bidder's offer is found to be, following an evaluation of **all** technical aspects, technically non-compliant, that very same offer should not be considered any further, irrespective of its financial compliance or otherwise.

It goes without saying that evaluations cannot be undertaken in isolation of the Contracting Authority's final objectives. To this end, evaluators must necessarily possess adequate technical knowledge to be able to ensure that any such objectives are by no means jeopardized. 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 held that “[i]l-prinċipju ta' trasparenza jrid li l-Kumitat ta' evalwazzjoni jimxi mad-dettalji tekniċi kif imniżżla fid-dokument tas-sejha, **u mhux jiddeciedi li jaqgħzel liema li jidhirlu li hi l-aħjar offerta.**” Regrettably, this decision confirms that the evaluation process did not match the level of scrutiny one would reasonably expect in such circumstances, this leading to an undesirable scenario whereby the preferred procurement proposal definitely does not fully attain the final objectives of this procurement procedure, namely **waste disposal.**

The waste streams identified during decommissioning, all of which are listed in the Outline Decommissioning Plan, cannot be disposed of, **in their entirety**, domestically. As a matter of fact, the waste streams identified during decommissioning may only be **fully** disposed of abroad at environmentally authorised sites. Incidentally, the appellant company is the **only company currently in possession of a valid export permit issued by the competent Authority and authorised to undertake such operations.** Thus, the award of this procurement procedure must necessarily have been made in favour of an economic operator who is not yet licensed to offer disposal of all waste streams as required under this procurement procedure. Needless to say, it is baffling to note that such a fundamental requisite necessary to fully attain the objectives set out in the tender document has been overlooked by technical evaluators who, one would presume, are well versed in this subject matter. 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 the appellant.

Wherefore, my client objects to the decision of the 28th of March 2024 as per above and respectfully requests the Board:

- i) to declare that the decision of the 28th of March 2024 informing PT Matic Environmental Services Limited that it had been unsuccessful in its bid does not conform with the mandatory requirements set out in the Public Procurement Regulations (S.L. 601.03) and the General Rules Governing Tenders;

- ii) to cancel and revoke the decision of the 28th of March 2024;
- iii) to cancel and revoke the award of the tender to the recommended bidder;
- iv) to reintegrate PT Matic Environmental Services Limited's offer in the tendering process;
- v) to order anything else which is conducive and necessary for the execution of the foregoing requests;
- vi) to order the reimbursement of the deposit being paid hereon.

Finally, a bank transfer of €3,145 is hereby being affected with this objection/appeal. Appellant company submits that since: i) this procurement procedure did not include an estimated value set by the Contracting Authority (*vide* **Doc. 'B'**); and ii) no information relative to the required deposit was listed in the Contracting Authority's decision; the deposit affected represents a sum equivalent to 0.5% of its offer. The appellant company is, however, amenable to adjust its deposit in accordance with any direction and/or order duly given by this Revisory Board.

With costs.

A handwritten signature in black ink, appearing to read 'Ryan C. Pace', written in a cursive style.

Dr. Ryan C. Pace

Message Centre

← Message Centre

Direct Message: Clarification

= Buyer = Supplier

Created Date	To/From	Subject	Message
28/08/2023 14:18:32	To: owen.vassallo@enemed.com.mt From: sales@pimatic.com.mt	Clarification	To whom it may concern, In view of the tender in caption, could you kindly indicate the budget that has been allocated for the cleaning and casting away of hazardous waste? Diedri Sir / Madam,
31/09/2023 18:20:35	To: sales@pimatic.com.mt From: owen.vassallo@enemed.com.mt	RE: Clarification	If it is not Petromat's policy to publish the allocated budget in its call for tenders, Prospective bidders are free to quote with their most competitive and reasonable prices. Regards,

Reply

2 items found, displaying all items.



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

Authorise

Printed by: Ms. Sarah Grech
Printed on: 08/04/2024 - 08:59
Document ID: 19678130

Pay third party

Transaction details

Transaction:	Pay third party
Beneficiary name:	Cashier Malta Government
Relation:	Retail
Reason:	Purchase of Services
Payment details:	EM023/23 TENDER FOR THE CLEANING AND WASTE DISPOSAL
Currency:	EUR - Euro
Beneficiary IBAN/Account:	MT55MALT011000040001EURCMG5001H
Beneficiary IBAN/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:	No
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 3,145.00
Receiving bank to get the money as:	normal priority payment
To be effected on:	as soon as possible
Credited amount:	EUR 3,145.00
Debited amount (excluding charges):	EUR 3,145.00
Estimated amount to be withdrawn from account:	EUR 3,149.00
Transaction charge:	EUR 4.00
Creator:	Ms. Christina Bonett
Authorised by:	Ms. Sarah Grech

Transaction result

Status:	Your instructions have been processed successfully.
Transaction ID:	141191454

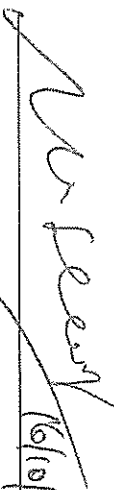
TENDERING SCHEDULE FORM

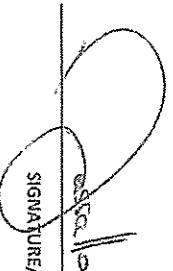
TENDER REFERENCE NO. EM023/23

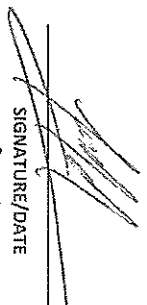
TENDER DESCRIPTION:- Tender for the Cleaning and Waste Disposal, as Part of Decommissioning Works, at the San Lucjan Oil Terminal In Qajjenza

BIDDER	REMARK	Total (Excluding VAT)
1	ENV Energy Solutions Ltd. Submitted	€ 2,068,754.43
2	Waste Oils Company Limited Submitted	€ 699,000.00
3	PT Matic Environmental Services Ltd. Submitted	€ 629,000.00
4		
5		
6		
7		
8		
9		
10		

Note: this document must be signed by a minimum of 3 (three) Enemed Officials.



SIGNATURE/DATE 16/10/23


SIGNATURE/DATE 16/10/23


SIGNATURE/DATE 16/10/23