

Public Contracts Review Board

[info.perb@gov.mt](mailto:info.perb@gov.mt)



15th 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**

**Reasoned Reply of Petromal (Holdings) Company Limited (C 65288)**

I have received instructions from Petromal (Holdings) Company Limited (hereafter referred to as the 'Petromal') to provide the following **Reasoned Reply** to the Reasoned Letter of Objection filed by PT Matic Environmental Services (C 17720) (hereafter referred to as the 'Appellant') dated 8th April 2024.

Petromal maintains that the grievances articulated by the Appellant lack legal and factual merit and should therefore be dismissed by this Honorable Board for the ensuing reasons:

**The First Grievance: Nullity of the Communication/Notification of the Rejection Notice (Name of Contracting Authority)**

The Appellant asserts that the communication/notification through which the Appellant was informed of its rejection, is deemed "incorrect, irregular, and in manifest breach of the applicable regulatory framework." This assertion is solely based on the assertion that the notification erroneously attributes the contracting authority to "Enemed Co. Ltd" instead of Petromal.

While it is accurate that Petromal serves as the contracting authority and not Enemed, this discrepancy stemmed from an administrative oversight on the part of Petromal, which utilized the administrative infrastructure of Enemed in the formulation of the tender and the dispatching

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of relevant communications. The failure to modify the template to replace "Enemed" with "Petromal" was purely an oversight, or "*lapsus calami*" as per the Appellant's terminology.

It is indeed pertinent to note that the Appellant is factually incorrect in asserting that Enemed is a "separate and distinct legal entity with absolutely no affiliation with Petromal Company Limited." In actuality, Enemed Co Ltd (Registration No. C 66404) is wholly owned by Petromal, except for one share held by Malta Government Investments Limited:

Issued Shares - Shareholders (2)

Shareholder	Shares	Type	Class	Number Of Shares	Value Per Share	Percentage Paid Up	On Behalf Of
<b>MALTA GOVERNMENT INVESTMENTS LIMITED</b> Registration Number: C 10175 Address: CLOCK TOWER, LEVEL 1 TIGNE POINT, SLIEMA MALTA		ORDINARY		1	€1.000000	100	
<b>PETROMAL (HOLDINGS) COMPANY LIMITED</b> Registration Number: C 65288 Address: LAP121, LUQA AVIATION PARK, AVIATION AVENUE, LUQA MALTA		ORDINARY		62,249,999	€1.000000	100	

It is further submitted that since both companies' inception in 2014, Enemed, being the principal distributor of petroleum products in Malta, has typically issued public contracts for tender in accordance with the relevant Regulations, and therefore possessed a fully established administrative framework in this regard, which was utilised by its holding company Petromal. The aforementioned oversight was a consequence of this utilization, and nothing more.

Moreover, and without prejudice to the aforementioned, it is respectfully submitted that neither is there any regulation or rule that deems such notification invalid (thereby invalidating the entire process), nor can the Appellant reasonably argue that it suffered any prejudice, let alone irreparable prejudice, solely due to the mention of Enemed instead of Petromal in the notification in question.

**The Second Grievance: Nullity of the Communication/Notification of the Rejection Notice  
(Failure to Disclose Reasons for Rejection and Other Information)**

The Appellant further asserts the nullity of the rejection notice on the grounds that it failed to meet the criteria stipulated in Regulation 272 of the Public Procurement Regulations (PPR) and/or section 19.2 of the General Rules Governing Tenders. The contention here is that the Appellant was not provided with the requisite information, including the reasons for rejection. Furthermore, it argues that this alleged omission is exacerbated by the statement that *'the contract will be awarded to the tenderer submitting the cheapest priced offer,'* maintaining that it indeed submitted the most economical bid.

Petromal respectfully rebuts this grievance on three fronts:

- i. Firstly, Petromal submits that Regulation 272 of the PPR, as cited by the Appellant, is misapplied and/or misinterpreted, as it does not impose any obligation on Petromal (or any other contracting authority) to disclose the reasons for rejection in the rejection notice under scrutiny. Regulation 272 references Regulation 242, which explicitly outlines the right of the tenderer to **request** such information, rather than mandating the contracting authority to provide such information unprompted. No such request for information has been made by the Appellant or any other participants prior to the filing of this appeal. In support of this position, Petromal cites the following judgment delivered by the **Court of Appeal on 16<sup>th</sup> December 2021, in the case of "Pharmadox Health Care Limited v. Central Procurement and Supplies Unit fil-Ministeru tas-Saħħa et,"** wherein the Court clarified the scope of information disclosure obligations as follows:-

*"18. Dan it-tagħrif ma huwiex meħtieġ li jinġhata fl-avviż li bih l-oblatur ikun mgħarraf li l-proposta tiegħu ma ntlaqx: huwa meħtieġ li jinġhata biss lil oblatur li jkun għamel offerta ammissibli jekk ikun intalab dak it-tagħrif, ukoll jekk it-talba tkun saret minn oblatur ieħor:"* (emphasis added)

- ii. Secondly, notwithstanding the foregoing, the purported lack of reasons for rejection did not result in any prejudice to the Appellant, as evidenced by its ability to lodge an appeal on substantive grounds, including financial and technical considerations.
- iii. Thirdly, with regard to the contention that the Appellant submitted the "cheapest priced offer" Petromal humbly submits that this assertion is factually incorrect. While the initial bid submitted by the Appellant (see the attached "**Dok. A**") appeared to be the most economical (€629,000 compared to the winning bidder's offer of €699,000), it later emerged upon bid opening that:
- a. the Appellant did not include the VAT element in his final financial offer as submitted, amounting to €113,220.00, which leads to an over gross offer of €742,220.00 (see the attached "**Dok. B**"). This in contrast to the winning bidder's financial offer which was inclusive of VAT (see the attached "**Dok. C**");<sup>1</sup>
  - b. moreover, the Appellant's offer did not include the subsea pipeline cleaning, valued at an additional **€130,000** excluding VAT (see also the attached "**Dok. B**"), even though this this was part and parcel of the Decommissioning Plan issued together with the tender document (see page 16 thereof).
- For these reasons alone the Appellant is factually incorrect in maintaining that it submitted the cheapest priced offer.
- iv. Furthermore, in response to the Appellant's reference to the General Rules (Governing Tenders), Petromal wishes to clarify that no such rule or general condition regarding the merits of this Objection/Appeal was included in the tender document.

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<sup>1</sup> N.B. Even though the winning bidder's financial offer did not include (in the lump sum price quoted) the price for the filling of sub-sea lines with concrete (per cubic metres), the cubic metres involved would have potentially led to an increase of circa €7,500 which would still render it the most cheapest offer.

**The Third Grievance: Incomplete and Non-Technical Evaluation Process – Only the Appellant is Licensed to Export Waste**

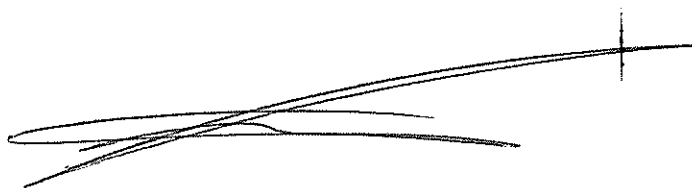
The Appellant contends, through its third grievance, that the evaluation committee, and by extension Petromal, awarded the Contract to a bidder that, in the Appellant's assessment, lacks the capability to fulfill the procurement's waste disposal scope. It argues that as the sole company possessing the necessary permit to export waste from Malta, as issued by the competent Authority, the Contract must have been, by default, awarded to an economic operator *"not yet licensed to offer disposal of all waste streams"* as required by the procurement procedure.

This grievance, however, lacks merit for the following reasons:

- i. The successful bidder (Waste Oils Company Limited) has duly attested to its compliance with the stipulated tender conditions (refer to attached "**Dok. D**"), accompanied by documentary evidence of licenses and permits issued by the Environmental and Resources Authority (ERA), the competent regulatory body.
- ii. Furthermore, based on information provided by the Appellant itself, which echoes the contentions outlined in this specific grievance (namely, its claim to be the sole licensed entity for waste exportation in Malta), Petromal mandated all respondents, prior to adjudication, to furnish a Method Statement for cleaning and waste oil removal at San Lucian Terminal, Qajjenza, Birżebbuġa. The successful bidder has indeed certified its authorization to conduct waste oil removal, storage, processing, and disposal at its Marsa facility under Integrated Pollution Prevention and Control Permit IP0002/08/D issued by ERA. Additionally, it holds ERA licensing as a waste broker (refer to attached "**Dok. E**").

- iii. Consequently, the successful bidder has demonstrated its compliance with all requisite licensing, permitting, and regulatory standards imposed by local authorities, enabling it to manage, transport, and dispose of any encountered waste streams on-site as stipulated in the tender document (refer to clause 1.5 therein).
- iv. It is further contended, for all practical purposes, that the eligibility criteria did not mandate submission of evidence pertaining to licensing or authorization for waste **exportation** beyond Malta, as insinuated by the Appellant in this grievance, but only for its removal. Thus, there has been no negligent or careless evaluation and/or adjudication throughout any phase of the tender process, as contended by the Appellant.

Considering the above, Petromal humbly submits that the grievances set out in the Reasoned Objection of the appellant ought to be dismissed, with costs, by this Honourable Board.



**Avv. Andrew Sciberras**

"Dok. A"

## Quick Call Summary

Title: EM023/23 - Tender for the Cleaning and Waste Disposal, as Part of Decommissioning Works, at the San Lucjan Oil Terminal In Qajjenza

Opening Date: 07/08/2023

Closing Date: 15/10/2023

Status: Awarded

Framework/Internal Reference: 799639670

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

## Respondee(s)

Company Name	Invited Email Address	Location	Price
Sammut Marine Limited	benjamin@sammutmarmine.com	No location given	N/A

Company Name	Invited Email Address	Location	Price
JF group	Officeadministrator1@jfgroup.com.mt	No location given	N/A

Company Name	Invited Email Address	Location	Price
Triton Engineering Limited	ian.scerri@tritonmalta.com	No location given	N/A

Company Name	Invited Email Address	Location	Price
ENV Energy Solutions Ltd	jana.muscat@envenergysolutions.com	No location given	€2,068,754.43

Company Name	Invited Email Address	Location	Price
Waste Oils Company Limited	czg@falzongroup.com	No location given	€699,000.00

Company Name	Invited Email Address	Location	Price
PT Matic Environmental Services Ltd	sales@ptmatic.com.mt	No location given	€629,000.00

## Invited Suppliers

Company Name	Invited Email Address	Invite Accepted	Accepted Date
JF group	Officeadministrator1@jfgroup.com.mt	Yes	16/08/2023

Company Name	Invited Email Address	Invite Accepted	Accepted Date
Sammut Marine Limited	benjamin@sammutmarnine.com	Yes	11/08/2023

Company Name	Invited Email Address	Invite Accepted	Accepted Date
Triton Engineering Limited	ian.scerri@tritonmalta.com	Yes	11/08/2023

Company Name	Invited Email Address	Invite Accepted	Accepted Date
ENV Energy Solutions Ltd	jana.muscat@envenergysolutions.com	Yes	08/08/2023

Company Name	Invited Email Address	Invite Accepted	Accepted Date
Waste Oils Co. Ltd	czg@falzongroup.com	Yes	07/08/2023


Company Name	Invited Email Address	Invite Accepted	Accepted Date
PT Matic Environmental Services Ltd	sales@ptmatic.com.mt	Yes	07/08/2023

Company Name	Invited Email Address	Invite Accepted	Accepted Date
Domeman Glove Co Ltd	noel.zeraboffa@dgsafety.com.mt	No	N/A



"Dok. B"

6.1 FINANCIAL OFFER

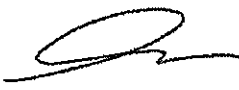
<b>Bidder's name</b>	PT Matic Environmental Services Ltd	
<b>Item</b>	<b>Description</b>	<b>Cost/rate excluding VAT</b>
	Cleaning & Waste Disposal as part of Decommissioning	
	Works at the San Lucjan Oil Terminal, Qajjenza	€ 629,000.00
	*excluding sub-sea pipelines	
Subtotal excluding VAT		€ 629,000.00
VAT		€ 113,220.00
Total including VAT		€ 742,220.00
<b>Signature</b>		
<b>Name of person filling form</b>	Oliver Fenech	
<b>Date</b>	13-October-2023	

extra items not covered in the above are to be detailed in the table below:

Item description	Cost/rate excluding VAT
Cleaning and disposal of Wastes from Sub-Sea Pipelines (2x 12" & 1x 8")*	€ 130,000.00 ex VAT
*see Terms & Conditions enclosed	

"Dok. c"

### 6.1 FINANCIAL OFFER

<b>Bidder's name</b>	Waste Oils Company Limited	
<b>Item</b>	<b>Description</b>	<b>Cost/rate excluding VAT</b>
	Cleaning of all tanks and pipelines and safe waste disposal	
	(lumpsum)	
	Subtotal excluding VAT	€592,372.88
	VAT	€106,627.12
	Total including VAT	€699,000.00
<b>Signature:</b>		
<b>Name of person filling form:</b>	Cornelia Zammit German	
<b>Date:</b>	14 <sup>th</sup> October 2023	

Any extra items not covered in the above are to be detailed in the following table:

<b>Item description</b>	<b>Cost/rate excluding VAT</b>
Filling of sub-sea lines with concrete (subject to approval by ERA)	€62 per cubic metre

"Dok. D"



FALZON  
Group of Companies

## WASTE OILS COMPANY LIMITED

42, Spencer Hill, Marsa MRS1955, Malta  
Tel: (+356) 22017100 (+356) 22017120 Fax: (+356) 21 446508  
E-mail: [info@falzongroup.com](mailto:info@falzongroup.com)

13<sup>th</sup> October 2023

**Re: EM023/23 – Tender for the Cleaning and Waste Disposal as part of Decommissioning Works at the San Lucian Oil Terminal in Qajjenza:**

As part of the Eligibility Criteria for this tender, Tenderer declares its agreement, conformity and compliance with the Conditions of the CFT, reference in caption.

A handwritten signature in black ink, appearing to be 'Cornelia Zammit German', written in a cursive style.

Cornelia Zammit German  
Director

"Dok-E"



FALZON  
Group of Companies

## WASTE OILS COMPANY LIMITED

42, Spencer Hill, Marsa MRS1955, Malta  
Tel: (+356) 2201 7100 (+356) 2201 7120 Fax: (+356) 21 446508  
E-mail: info@falzongroup.com

### Method statement for cleaning and waste oil removal at San Lucian Terminal, Qajjenza, Birzebbuga

1. Waste Oils Company Limited (WOCL) has submitted a tender for cleaning and waste oil removal from tanks and ancillary infrastructure at San Lucian Terminal, Qajjenza, Birzebbuga.
2. WOCL is authorised to carry out removal, storage, processing and disposal of waste oils and oil-contaminated waste at its facility in Marsa by virtue of Integrated Pollution Prevention and Control Permit IP0002/08/D issued by ERA. WOCL is also licenced by ERA as a waste broker.
3. A supervisor shall be appointed for the duration of the works on site.
4. All personnel engaged on this project shall be in good health and will be equipped with all necessary and adequate Personal Protective Equipment (PPE) including but not limited to safety gloves, breathing apparatus, masks, safety helmets, gas monitors, protective clothing, hearing and vision protectors, safety harness and safety shoes.
5. A risk assessment of the works including works in confined spaces shall be carried out, and a confined space entry permit shall be issued and updated daily. Personnel will be trained on the outcome of the risk assessment and on the provisions of the confined space entry permit. During the works the provisions of L.N. 41 of 2004 shall be strictly adhered to.
6. Access to tanks shall be carried out from manholes. No other entry points are anticipated.
7. Water and Electricity (single phase) must be available on site for the duration of the operation. EXP (explosion proof) lighting will be provided and temporarily installed inside the tank as required.
8. Fire extinguishers and spill kits will be on standby. Foam fire extinguishers will be placed readily available on-site.

9. Prior to entry the tank will be certified gas free by independent surveyor. Lighting and ventilation will be rigged inside tank. Scaffolding will be rigged as necessary.
10. The required pumping equipment will be rigged to facilitate the pumping of bottom stock.
11. Cleaning will be carried out by first suctioning of all liquid and semi liquid material and then removing the solids by hand trowel or shovel as necessary.
12. Pumpable liquid waste will be removed by vacuum truck and solid waste will be stored in Intermediate Bulk Containers (IBCs) for removal from site.
13. Once all oil has been removed a hot jetting unit will be rigged to clean the interior surfaces of the tank with pressurized water while wash water and loosened contaminants are simultaneously vacuumed out of the tank.
14. The same procedure will be used for cleaning of pipelines and truck loading infrastructure, with logical amendments.
15. All liquid waste and sludges shall be transported and disposed of as per statutory obligations via approved waste carriers for eventual processing and/or export to licenced receivers.