

PUBLIC CONTRACTS REVIEW BOARD

Case 1774 – 5000/2020 – Negotiated Procedure – AW 139 1200H/4yrs Inspection
(Recommencement 2022)

9th August 2022

The Negotiated Procedure was re-issued on the 11th January 2022 and the closing date was the 10th March 2022. The estimated value of the call, excluding VAT, was € 600,000.

On the 4th July 2022 Gulf Med Aviation Services Ltd filed an appeal against the Armed Forces of Malta - as the Contracting Authority objecting to cancellation of the Negotiated Procedure.

A deposit of € 3,000 was paid.

On the 2nd August 2022 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Dr Vincent Micallef and Mr Richard Matrenza as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Gulf Med Aviation Services Ltd

Dr Joseph Camilleri	Legal Representative
Dr Daniel Cutajar	Legal Representative
Mr Simon Camilleri	Representative

Contracting Authority – Armed Forces of Malta

Major Nicholas Grech	Chairperson Evaluation Committee
Lt Mark Philip Borg	Secretary Evaluation Committee
Capt Charlo Attard	Member Evaluation Committee
Major Matthew Portelli	Representative

Dr Charles Cassar Substitute Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Joseph Camilleri, Legal Representative for Gulf Med Aviation Services Ltd (Gulf Med) referred to his request to have the case heard by a different Board which had apparently been overlooked but accepted to have the case heard by the Board as constituted.

He then gave an overview of submissions and the history of this Negotiated Procedure since 2020 quoting the Court of Appeal's directions and judgement and the subsequent exchanges between

Gulf Med and the Armed Forces of Malta (AFM) [tabled as Doc 1]. AFM approached both bidders but whilst Harrods withdrew its offer Gulf Med confirmed that they were ready to confirm their offer. They also indicated that they were willing to discuss any changes required. At this stage AFM requested individual prices of items, names of suppliers and such details beyond what was originally requested. In June Appellant was advised that the tender would be cancelled with no reason given for the decision. The AFM indicated that it did not need to explain the reason for cancellation as this would be in their letter of reply to the appeal. One wonders why?

The reasons given for the cancellation, according to Dr Camilleri, was that the cost of the rotor blades had increased – however the contract was not for rotor blades but for maintenance and in any case the overall price had remained the same despite the increased costs of the rotors. The second reason stated was that the AFM were now stating that they had the capacity to carry out the maintenance themselves ‘in house’. Bearing in mind the questions the AFM had asked about prices, suppliers etc. this decision reeked of an element of bad faith on their part.

Major Nicholas Grech, Representative for the Armed Forces of Malta, said that the Authority had to deal with this matter in two phases. First they had to have confirmation that the 2020 offers would be honoured. Harrods were not interested whilst Gulf Med were ready to proceed subject to any possible changes. He emphasized that the contract is for a 4year or 1200 Hours inspection not a four year contract. Gulf Med was ready to proceed but the Authority wanted to ensure that there would be no price changes. In fact there were changes from the time of the Appeal Court hearing in a reduction in man hours and in certain line item changes. This could not be accepted by the Authority as the technical specifications had been changed through reducing the man hours.

Dr Camilleri interjected to state that there was no reduction in man hours.

Continuing Major Grech re-iterated that the man hours had been reduced and it was necessary to ask for prices for certain items in view of cost increases since 2020. In the two year hiatus since the original offer Army personnel had been trained to undertake the maintenance – this is in line with the AFM’s policy to do as much as possible in house. Like any other bidders certain niche parts of the process would have to be done by outside contractors.

Dr Camilleri said it was odd that only now was the Authority stating that they can do the work in house and makes all the exchanges between the parties a sham and lacking transparency. The man hours in the new offer will not decrease and overall the package is cheaper. Gulf Med offered to discuss matters but made it clear that they were prepared to stand by the original offer. In the context of the decision of the Court of Appeal there is no justification for the cancellation of this procedure.

Major Grech concluded by stating that the principal reason for the cancellation were changes in the economic and financial regulations. The AFM is bound by military service regulations. The Appellant did not meet with the requirements and the Authority could not continue with the original bid.

The Chairman thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

Having noted this objection filed by Appellant – Gulf Med Aviation Services Ltd., (herein after referred to as appellant) on 4/ 07/ 2022, refers to the claims made by the same appellant regarding the Negotiated Procedure listed as case No.1773 in the records of the Public Contracts Review Board cancelled by Armed Forces of Malta

(herein) after referred to as the contracting authority) and its verbal submissions during the hearing on 02 August 2022.

Whereby, the appellants contend that:-

Though the cost rotor blades had increased , the contract was not for rotor blades but for maintenance . Moreover the overall price had remained the same despite the increased costs of the rotors. The Appellant also contends that the AFM were now stating that they had the capacity to carry out the maintenance themselves ‘in house’. Bearing in mind the questions the AFM had asked about prices, suppliers etc. this decision reeked of an element of bad faith on their part.

The board also noted the letter of reply by the contracting authority dated 14 July 2022 together with its verbal submissions during the hearing on the 02 August 2022.

Whereby, the Contracting authority contended that the technical specifications had been changed through reducing the man hours and that presently the Armed forces can carry out in house maintenance.

In conclusion after the board after having heard the arguments and documentation from both parties namely the appellant and the contracting authority:

Directs

that the Negotiated Procedure continues bearing account the submissions made by the contacting authority in connection with the economic and technical aspect of the negotiated procedure and also the submissions made in respect to the change in the terms of technical specifications and the price in conjunction with the alteration of the number of man hours.

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The Board concludes and decides that:

- a) Upholds the Appellant’s Letter of objection.
- b) The negotiated procedure continue.
- c) Directs that the deposit paid by the Appellant be reimbursed

Dr Charles Cassar

Chairman

Dr Vincent Micallef

Member

Mr R A Matrenza

Member

