

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 2056 – TM 044/2024 – Call for Quotation for the Provision of Coach Transport Services in an Environmentally Friendly Manner.**

**5<sup>th</sup> May 2025**

The Board,

Having noted the letter of objection filed by Dr Jonathan Abela acting for and on behalf of Unscheduled Coach Services Ltd, (hereinafter referred to as the Appellant) filed on the 4<sup>th</sup> September 2024;

Having also noted the letter of reply filed by Dr Chris Cilia acting for Transport Malta (hereinafter referred to as the Contracting Authority) filed on the 9<sup>th</sup> September 2024;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 29<sup>th</sup> April 2025 hereunder-reproduced.

### **Minutes**

#### **TM 044/2024 – Call for Quotation for the Provision of Coach Transport Services in an Environmentally Friendly Manner**

The tender was published on the 13<sup>th</sup> August 2024 and the closing date of the call for tenders was the 22<sup>nd</sup> August 2024.

The estimated value of this tender, excluding VAT, was € 7,700.

On the 4<sup>th</sup> September 2024 Unscheduled Coach Services Ltd filed an appeal against the decision of Transport Malta to disqualify their offer on the grounds that it was not technically compliant.

A deposit of € 400 was paid. There were six bids.

On the 29<sup>th</sup> April 2025 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Mr Keith Victor Grech and Mr Richard Matrenza as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

#### **Appellant – Unscheduled Coach Services Limited**

Dr Jonathan Abela

Legal Representative

## **Contracting Authority – Transport Malta**

Dr Chris Cilia	Legal Representative
Ms Chantelle Falzon	Chairperson of the Evaluation Committee
Ms Josephine Farrugia	Evaluator
Ms Elaine Micallef	Evaluator
Mr Ivan Pierre Vella	Representative

### **Opening Statements:**

The Chairman welcomed the parties and invited Dr Jonathan Abela to present his submission.

In his submission Dr Abela stated that his submission deals with purely legal aspects.

In the first place he referred to the EU Directives which he had presented on his written appeal dated 4<sup>th</sup> September 2024 and which the PCRB can refer to and scrutinize.

He also referred to the answer to this appeal by the Contracting Authority which states that “from a legalistic point of view the assertion that the EU Directive 2019/116 does not apply to Coaches” is correct.

Dr Abela also referred to a decision by the PCRB i.e. Case 1846, where the same legal points were raised and this board accepted the appeal presented by Unscheduled Coach Services Ltd.

The Chairman invited Dr Chris Cilia to make his submissions.

Dr Cilia stated that the Contracting Authority’s position is clearly expounded in the letter of rejection dated 9<sup>th</sup> September 2024. He reiterated that the Contracting Authority has all the right, (and which cannot be negated by anyone) to implement in its call all those conditions that she feels are relevant. He insisted that in this case it felt that the provided vehicles for this service had to be environmentally friendly and this fits with the present needs for a green economy. Furthermore, he insisted that the call had no commercial restrictions or any impediments to those who have such vehicles and anyone having these requirements have the right to bid for this tender. Dr Cilia insisted that those who do not meet these requirements need not apply.

At this stage Dr Abela intervened and stated that Transport Malta is a public entity, and it has to observe the laws and regulations since these have been adopted by the Central Government following EU legislation.

Dr Cilia reiterated that those regulations impose minimum requirements, and this does not mean that the Contracting Authority cannot go beyond them. He insisted that what matters is that one does not go below them.

As no witnesses were called, the Chairman said that the Board notes that the parties are prepared to rest on their written submissions and will issue its decision accordingly. Legal representatives for the Appellant and the Contracting Authority confirmed such statement. He then thanked the parties and declared the hearing closed.

### **End of Minutes**

---

**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 29<sup>th</sup> April 2025.

Having noted the objection filed by Unscheduled Coach Services Ltd (hereinafter referred to as the Appellant) on 4<sup>th</sup> September 2024, refers to the claims made by the same Appellant with regard to the tender of reference TM 044/2024 listed as case No. 2056 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Jonathan Abela

Appearing for the Contracting Authority: Dr Chris Cilia

Whereby, the Appellant contends that:

- a) On the 30<sup>th</sup> of August 2024, the objector received the notice of exclusion, informing the objector that his bid *“has not been accepted by Transport Malta, since it is stipulated that 45% of the procured vehicles must be certified as using alternative fuels. To this effect this bid is considered as technically non-compliant”*.
- b) The Objector contends that their fleet is environmentally friendly as the submitted vehicles are in conformity with Euro V and Euro VI standards, make use of AD Blue Fuel to produce less emissions and hence should have been deemed as environmentally friendly and hence technically compliant.
- c) The Objector further refers to Legal Notice 75 of 2022, which excludes vehicles of category M3, other than Class I and Class A vehicles as defined in points (2) and (3) of article 3 of Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, component and separate technical unites intended therefor. Therefore, the objector argues that vehicle included in this tender are excluded under the Public Finance Management Act (Chapter 601) through legal Notice 75/2022 as the vehicles tendered are Class M3 with a seating capacity of over 22 passengers but without areas for standing passengers to allow frequent passenger movement. Whereas, the exemption would not have been applicable if the vehicles had areas for standing passengers.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 6<sup>th</sup> September 2024 and its verbal submission during the hearing held on 29<sup>th</sup> April 2025, in that:

- a) Whilst from a legalistic point of view this assertion is correct, the upholding of this legalistic argument should not in any way detract from the fact that the proposal submitted by the Objector is technically non-compliant since it did not meet the requirement that "45% of vehicles procured must be certified as using alternative fuels according to DIRECTIVE (EU) 2019/116."
- b) Whether this is a requirement established in DIRECTIVE (EU) 2019/116 is absolutely irrelevant and beside the point. In actual fact the said DIRECTIVE (EU) 2019/116 does not apply to coaches, as correctly submitted by the objector, but this does not mean that the authority does not have the right to require that the Coaches provided pursuant to the Call for Quotations – at least 45% of them – use alternative fuels.
- c) The Contracting Authority had a very right to require by way of technical specifications that the coaches which are to be provided for the service must be in line with the environmentally-friendly requirements established in S.L. 601.06 even if the Directive per se applies to other type of vehicles and not to coaches.
- d) The Contracting Authority also submits that it finds in principle no objection to have the bids reevaluated should this be deemed required by the Board.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will now consider Appellant's grievances as follows in their entirety.

- a) The Board notes that the Appellant raised two main grievances. The first grievance concerns that the Appellants' fleet is in fact deemed as environmentally friendly and hence technically compliant. The second grievance relates to the technical requirement that "*45% of vehicles procured must be certified as using alternative fuels according to DIRECTIVE (EU) 2019/116*" does not have legal basis. The Appellant contends that this requirement should not apply because the type of vehicles being tendered are excluded from the requirements by virtue of Legal Notice 75 of 2022.
- b) The Board determines that the primary issue to be resolved is whether the requirement for environmental compliance has a valid legal basis. Only if this is the case, the Board will proceed to address the second issue of technical compliance.

### **1<sup>st</sup> Grievance: Inapplicability of the quoted regulation with regards to Coaches**

The Appellant argues that the technical requirement "*45% of vehicles procured must be certified as using alternative fuels according to DIRECTIVE (EU) 2019/116*" lacks legal basis in this case because the type of vehicle included in this tender fall under the exemption categories under the Public Finance Management Act (Chapter 601) through legal Notice 75/2022. Specifically, the vehicles tendered are Class M3 with a seating

capacity of over 22 passengers but without areas for standing passengers. The exemption would not have been applicable if the vehicles had areas for standing passengers.

Conversely, the Contracting Authority asserts that *“whether this is a requirement established in DIRECTIVE (EU) 2019/116 is absolutely irrelevant and beside the point”*, it retains the right to impose environmental requirements exceeding those minimum requirements set by the Directive.

The Board notes that while it agrees that the Contracting Authority has the prerogative to impose requirements that goes beyond the minimum regulatory obligations, the Board is currently assessing whether the requirement has any legal basis. Upon the Board’s examination, it finds that had the requirement been *“45% of vehicles procured must be certified as using alternative fuels”* only, the Board would have agreed with the Contracting Authority. However, one has to assess the technical requirement in its entirety and not only parts of it. Once the Contracting Authority included *“according to [Board emphasis] DIRECTIVE (EU) 2019/116”*, it restricted its evaluation to what is included in the Directive, in accordance with the self-limitation principle.

In this respect, the Contracting Authority, in its reasoned letter or reply, agrees with the Appellant and admits that:

*“Whilst **from a legalistic point of view this assertion is correct** [Board emphasis], the upholding of this legalistic argument should not in any way detract from the fact that the proposal submitted by the Objector is technically non-compliant.”*

and

*“In actual fact, the said **DIRECTIVE (EU) 2019/116, does not apply to coaches** [Board emphasis], as correctly submitted by the Objector....”*

Furthermore, the Board also notes that the relevant directive is DIRECTIVE (EU) 2019/1161 and not DIRECTIVE (EU) 2019/116.

Therefore, based on the above reasons the Board finds merit in the Appellant’s grievance and determines that the Appellant should not be penalised, by way of exclusion, by a requirement that lacks proper legal foundation. Accordingly, the Board upholds the Appellant’s first grievance.

## **2<sup>nd</sup> Grievance: Appellant being technically compliant.**

Having established the tender requirement lacks legal basis, the Board finds that the second grievance, relating to whether the Appellant was technically compliant with the requirement that at least *“45% of vehicles procured must be certified as using alternative fuels”* is rendered moot. Thus, the Board will not consider this grievance further.

**The Board,**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) To Uphold Appellant's contentions with respect to the grievance in relation to inapplicability of the quoted regulation with regards to Coaches;
- b) Revokes the recommendation of award made in favour of the recommended bidder;
- c) Orders the cancellation of Tender - TM 044/2024;
- d) Directs that the deposit paid by the Appellant to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Mr Keith Victor Grech**  
Member

**Mr Richard Matrenza**  
Member