

PUBLIC CONTRACTS REVIEW BOARD

Case 2113 – Objection - CT3000/2024 – Tender for the Services of Flight Simulator Training for Rotary and Fixed Wing Pilots to the Armed Forces of Malta: Lot 1 – Services of Re-Current Flight Simulator Training for Rotary Pilots of the Armed Forces

28th May, 2025

The Board,

Having noted the letter of objection filed by Dr Joseph Camilleri acting for and on behalf of **Leonardo S.p.A. [TID211373]**, (hereinafter referred to as the appellant) filed on the 14th February, 2025;

Having also noted the letter of reply filed by Major Carmelo Mangion acting for and on behalf the **Armed Forces of Malta** (hereinafter referred to as the Contracting Authority) filed on the 24th February, 2025;

Having noted that all parties to the appeal have not summoned any witnesses.

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 28th November 2024 hereunder-reproduced.

Minutes

Case 2113 – Objection - CT3000/2024 – Tender for the Services of Flight Simulator Training for Rotary and Fixed Wing Pilots to the Armed Forces of Malta: Lot 1 – Services of Re-Current Flight Simulator Training for Rotary Pilots of the Armed Forces

The tender was issued on the 25th of April 2024, and the closing date was the 11th of June 2024.

The estimated value of the tender, excluding VAT, was €1,500,000.

On 14th February 2025, Leonardo S.p.A. (VAT no. 00401990585) lodged an appeal against Armed Forces of Malta – the Contracting Authority, in accordance with Regulation 270 of the

Public Procurement Regulations. The appellant objected for his bid being financial non-compliant.

A deposit of €4,350. was paid.

There were six bids.

On the 27th of May 2025, the Public Contracts Review Board (PCRB), composed of Dr Vince Micallef as Chairman, Mr. Keith Victor Grech and Mr. Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Leonardo S.p.A. (Vat no. 00401990585)

Dr Joseph Camilleri – Legal Representative.

Contracting Authority – Armed Forces of Malta.

Major Carmelo Mangion – Chairperson of the Evaluation Board.

Captain Norman Sciberras – Secretary of the Board.

Captain Rick Dimech – Evaluator.

Captain Matthew Spiteri – Evaluator.

Captain Nicholas Galea – Evaluator.

Bombardier Glen Zammit – Drafting of Documents.

Major James Vella – Project Leader.

Recommended Bidder – Atlantic Airways Aviation Academy (TID211375)

Mr. Hanus Olsen – Tender and Procurement Lead.

Mr. Hans Peter Baserga – Contracts Manager.

Opening Statements

Dr Vince Micallef, Chairman of the Public Contracts Review Board, welcomed the parties, and invited the appellant's legal representative, Dr Joseph Camilleri, to deliver his initial submissions. The hearing was in English for the benefit of the interested parties.

Initial Submissions

Initial submissions by the Appellant

Dr Joseph Camilleri, legal representative for Leonardo S.p.A., commenced his submissions, by stating that, he wanted to clarify the outset. He would not be requiring any witnesses or evidence, as this was not a dispute based about the facts of the case or how the case progressed. This case was not about technical matter, issues, or disputes. This appeal was about the financial bid form, whether it was clear or not, and whether the Armed Forces of Malta (AFM) were correct in rejecting the bid as financially non-compliant. Leonardo's position was financially compliant, with an acceptable offer, subject to a clarification, and the bid should have not been rejected.

Dr Camilleri explained that the subject matter of this appeal refers to a tender for the Services of Flight Simulator training for Rotary and Fixed Wing Pilots to the AFM. Lot 1 referred to Rotary Pilots and Lot 2 referred to Fixed Wing Aircraft. The appeal refers to Lot 1. The call for tenders, envisaged training, provided over the course of 3 years. There was an indication that thirteen pilots would take part in this training, however over the course of the tender process, it was evident that the number of 13 pilots indicative by AFM, might change in the course of the 3-year period. Clarifications were requested.

He clarified, that, when Leonardo S.p.A stated that the tender was not clear, they were not attributing shortcomings or negligence from AFM. The lack of clarity refers to the financial bid form and the way it was presented, rather than to the technical requirements. In their reply, there were several references, where AFM replied, that Leonard was feigning ignorance as the tender was clear. This sort of tender involves an element of uncertainty, as the tender itself has an element of flexibility, because it did not necessarily mean that the 13 pilots would each receive 3 training sessions over 3 years. There could be an increase or decrease of the number and that not all pilots would receive training sessions. The appellant, according to the AFM, was technically compliant. This was even mentioned in the reply to the appeal. The financial bid was presented as an excel sheet and it indicated a quantity of 13 pilots. The excel sheet automatically multiplied the unit cost by 13. The Contracting Authority would be bound to procure 80% of the awarded contract value. Leonardo inputted the unit cost of one training session, which amounted to the value of € 16,645, which automatically lead to a grand total of €216,385. Leonardo understood this total as being one training session as per thirteen pilots, which is basically the value for the initial year. This amount was abnormally low for AFM, since they had based the contract for three years, and asked for an explanation. Leonardo explained that the price stated, was for one year, and that they had to multiply that price by three.

Dr Camilleri made some additional observations, stating, that Leonardo were not the only bidders to adopt this approach, as Copter Safety also adopted the same reasoning. Regarding Lot 2, Flight Safety International also provided a low figure, which suggests a similar reasoning. Evidently there was something misleading in the form.

Dr Camilleri addressed the possibility of changing the excel sheet. He clarified, that, when Leonardo said, that there was no opportunity to change the financial bid form, they, were referring to the blank spaces they had to fill on the form, and the formula was already built in. Departing from that formula could put at risk the offer itself. Leonardo presented the excel sheet automatically, calculated by the excel sheet formula itself, and also a printed pdf of the output of the excel sheet, with a header and footer. With response to AFM's letter, Dr Camilleri stressed, that the excel sheet did not contain space for additional information, that the lack of clarity became evident when other bidders adopted the same reasoning, and that the suggestion of a suitable alternative would be the submission of multiple financial bids. This did not make sense and it would increase confusion as AFM could consider them as the cheapest bidder.

Regarding the issue of clarification, AFM stated, that the explanation given by Leonardo was a rectification of the financial bid. Dr Camilleri understood that rectifications are not allowed, but in this case, a clarification was sought by Leonardo. The grounds for the rejection of Leonardo's offer were not solely it's financial bid, according to AFM, but it was also based on the fact that it was a partial offer, based on one year instead of three years.

Dr Camilleri concluded his speech by emphasising that the technical offer of Leonardo was acceptable, and that, the offer was allegedly a partial offer, and not a negligent mistake, but an unfortunate way of how the bid form was presented. He proceeded by saying, that, if the appeal had to be rejected, the deposit paid, should be returned, as there was no negligence from the bidder.

Initial submissions by the Contracting Authority

Major Carmelo Mangion, Chairperson of the evaluation Board and representing the Armed Forces of Malta (AFM) referred to the financial bid, stating, that the quantity was pilots not events and he quoted section 3 terms of reference Lot 1:

‘Services of recurrent flights simulator training for Rotary Pilots to the Armed Forces of Malta’.

Major Mangion emphasised, that, recurrent meant the unit price for every pilot, and not for every event. He said that the service for 39 recurrent events amounted to €649,155. During the evaluation, AFM sent a clarification request regarding the abnormal low offer to Leonardo S.p.A., as the estimated procurement value was €870,000, against Leonardo’s offer which was €216,385. Leonardo answered by confirming, that the price was for each event, and not each pilot, and he changed the total from €216,385 to €649,155. This was not acceptable, and he quoted note 3 from the financial bid form:

‘No rectification should be allowed so the end total amount cannot be changed’.

This was the reason why AFM rejected the offer. Also reference to section 1 ‘Instruction to Tenderers’.

‘The tenderer must offer the whole of the quantities indicated for each Lot and under no circumstances will tenders form part of the quantities required be taken into consideration’.

He quoted from a clarification sent by Leonardo:

‘With reference to the requirements, could you please confirm that the number of the recurrent, to be provided has to be intended as no 13 recurrent clauses per year, so 39 clauses in the total for 3 years?’.

AFM answered that in 2024 and 2025, they had 13 personnel available for simulator sessions, in 2026 there might be a slight increase. Therefore, they could not provide an exact figure due to potential pilot departures. They anticipated, conducting between 35 to 40 courses over the next three years. The reply was given on the 2nd of May, and the deadline for any additional information was 11th May, so they had enough time to clarify. Regarding the clarification that the exact number is not given, the financial bid form states, that the Contracting Authority would be bound to procure 80% of the awarded contract value. This is an indication that the numbers can decrease and increase. Another indication on the procurement document, article 20, ‘Modification to the Contract’ quotes:

‘The repetition of the services shall be kept at 50% of the contract value, the prerogative to order such repetition of services, shall vest in the Contracting Authority, and if not used, the contractor shall have no claim against government. The repetition of services may be required,

since more crew than those already envisaged will need to have their recurrent certification renewed’.

Major Mangion stated that AFM had the right to change the number of personnel as written down on the procurement document. Leonardo could have submitted two offers, one that was sent and another one with the correct amount.

Intervention by Bombardier Glen Zammit.

Bombardier Glen Zammit, who was responsible for the drafting of procurement documents, referred to article 26.2 of the special conditions, which is the ‘Payment Schedule’ quoting:

‘40% pre- financing- This shall be issued upon presentation of a pro -forma invoice, Performance Guarantee, and a Pre- Financing Guarantee which shall cover the same amount of 40% of the total contract value. The Pre- Financing Guarantee shall be released once the Project leader confirms that 16 training sessions have been conducted as requested in section 3’.

Regarding the interim payment Mr Zammit quotes:

‘The interim payment shall be paid once Project Leader confirms a further 12 training sessions have been conducted as requested in section 3 terms of reference article B1’.

A final balance must be paid, since they would not know what will happen in the third year, whether they are going to reach the 80%, or will have to use article 20.5 to modify the contract and add more pilots.

Finally, he pointed out that Leonardo could have foreseen that the 13 sessions were per year.

Reply Submissions by the appellant.

Dr Joseph Camilleri raised a point, where this was an unfortunate situation, that arose out of the contradiction between pilots, and training sessions, as there seems to be a flexible number. He emphasised that clarification is to be admitted.

Concluding remarks by the Contracting Authority.

Mr Zammit explained the reason why, at times, they wrote pilots, and at times training sessions. In article 26.2 there is no mention of pilots because AFM did not have 16 pilots, presently they have 12. In the financial bid form, they wrote pilots.

Major Mangion, interfered by saying, that, they expected that the unit cost reflects the training for each pilot, not each event.

Submissions by the Recommended Bidder

The Chairman Dr Micallef offered the preferred bidder for any submissions.

Mr. Hans Peter Baserga (ID No E3386477) representing Atlantic Aviation Academy, stated, that they went through the tender as all the other parties. They came to the conclusion of how

to submit their offer as the tender documentation was very clear, and that is why, they submitted the offer the way they did. They did not see any wrong approach under the AFM tender, and they did not think it was complicated, to cause mistakes, to mix up training pilot's sessions and events. They came to the right conclusion, that the tender document was very clear, straight forward, and there was nothing to argue about.

Conclusion.

With no further arguments submitted, Chairman Dr Vince Micallef formally thanked all present, and formally concluded the meeting.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 27th May, 2025.

Having noted the objection filed by Dr Joseph Camilleri for and on behalf of Leonardo S.p.A (hereinafter referred to as the Appellant) on the 14th February, 2025, refers to the claims made by the same Appellant with regard to the tender of reference CT3000/2024 listed as case No. 2113 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Joseph Camilleri LL.D

Appearing for the Contracting Authority: Major Carmelo Mangion

Whereby, the Appellant contends that:

The award recommendation from which Leonardo is appealing refers to a tender procedure leading to the award of a services contract for training to pilots of the AFM. Specifically, this objection refers to the recommended award of Lot 1, which envisages that the services in question be provided over a total period of one-hundred fifty-six weeks (i.e. three years) from date of last signature of contract. The sole award criterion was the price (vide Clause 5.1 of the RFP- attached as document L2), with the contract awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria.

In the communication of the 4th February, 2025, Leonardo was informed that its bid had been rejected as it had been found to be "*financially non-compliant*". The reasons given for such rejection were the following:

"The total price offer is priced at €216,385.00 excluding VAT and was considered as an 'Abnormally Low Tender' since it is substantially lower than the estimated value of the tender as determined by the Contracting Authority. For this reason, the Economic Operator was requested to justify/explain how he was able to submit such a tender for all the necessary sessions for thirteen (13) personnel for the period of three (3) years, hence explain with relevant information his financial offer, in terms of the Public Procurement Regulations, S.L. 601.03 regulation 243. The Economic Operator replied that the "Financial Bid Form" which was made available on the "e-tenders" web portal at the time of the tender release was in a non-modifiable form with the only blank space that could be filled in was the "Unit Cost including Taxes/Charges". The cells named "Total" and the cell named "Grand Total" were already filled in with an automatic mathematical formula based on the unit price offer.

In the absence of further clarifications and from the Economic Operator point of view, the "Unit Cost" has been intended as the price of one single Recurrent Event, for one pilot as the non-modifiable cell with the Quantity (number of pilots) was already set to thirteen (13).

Economic Operator continued that there was neither space, nor indication, to include the total price of three (3) years (i.e. for a total of thirty-nine (39) recurrent events). Leonardo Helicopters did not modify the content of the official excel form and included the tender price for one single Recurrent event, for one pilot, equal to €16,645.00. As a result of the mathematical formula already present in the excel file, the total price for thirteen (13).

Recurrent events is equal to €216.385.00. The price for thirteen (13) Recurrent events for three (3) years, for a total of thirty-nine (39) Recurrent events, is equal to €649,155.00.

Reference is made to Section 1 para 3.2 of the procurement document where; tenderers must offer the whole of the quantity or quantities indicated for each lot. Under no circumstances will tenders for part of the quantities required be taken into consideration. In his reply, the Economic Operator declared that the total price offer submitted is for 13 recurrent events for one year not for 13 pilots for the period of 156 weeks (3 years). In the same clarification, Economic Operator also declared that the total amount for the whole contract period is EUR 649, 155.00 not EUR 216,385.00. Financial Offer is Note 3 hence, no rectifications are allowed. Offer was deemed Financially non-compliant."

Leonardo feels aggrieved by AFM's decision to reject its tender, and is therefore filing this objection which is based on the grounds which will be listed further on. Prior to explaining its grievances, however, Objector will briefly set out the factual context and what led to the Contracting Authority's (wrong) decision.

2.0 Facts of the case

The following are the facts which are particularly pertinent and relevant to this objection:

As already indicated, the tender document "CT3000_2024" requires training for pilots for a period of 156 weeks (3 years). The tender document does not indicate the total number of pilots to be trained over the period of 156 weeks, nor does it indicate the total number of sessions required for each pilot. Indeed, the closest the tender document gets to indicating the number of training sessions is in Clause 26.2, which governs the Payment Schedule for Lot 1. The said Clause indicates that 40% of the fee payable shall be settled after 16 training sessions are conducted, 30% shall be paid when a further 12 training sessions have been conducted, and the remainder shall be "*dependent on amount of remaining training sessions*". Therefore, even this indication is inconclusive and very vague;

In the circumstances, Leonardo requested the AFM through clarification question n. 1 in "Clarification 2 CT3000 2024" (document L3) to clarify the number of recurrent courses per year. AFM replied by providing a rough estimate as follows:

With reference to requirement 3.B.i. 1.a. (Course Specifications): Could you please confirm that the number of Recurrent to be provided has to be intended as No. 13 Recurrent Courses per year (so No.39 courses in total for 3 years)?

In 2024, we have thirteen (13) personnel available for simulator sessions. In 2025, assuming no retirements, the same number of thirteen (13) personnel will be available. Looking ahead to 2026, there may be a slight increase from the 2025 number, but not exceeding two (2) additional personnel. Therefore, we cannot provide an exact figure at this time due to potential pilot departures, but we can confirm the number for each year in advance. As a rough estimate, we anticipate conducting between thirty-five (35) and forty (40) courses over the next three years.

In other words, this supposed "clarification" on the part of AFM did not clarify much! On the contrary, it was non-committal, both with respect to the number of participating pilots and with regard to the number of training sessions required.

The financial bid form "Financial Bid Lot 1" (Document L4) indicates thirteen (13) pilots but does not indicate the number of all the necessary sessions for the said thirteen (13) personnel for the period of three (3) years. As we have seen, AFM itself was not even sure about the number of personnel (13), and still less about the number of sessions which would be required.

It is known to whoever is well-versed in the bid submission process, that the financial bid form does not have the capability of allowing to bidder to provide any explanation.

It only permits the inputting of figures. In this case, the only possible entry was under the column "Unit Cost". The excel sheet itself then multiplied the "unit cost" by thirteen (13) pilots, even though, as we have seen, this is not necessarily the correct Annex 2 makes it clear that the offer is for training sessions for 156 weeks as required in the tender document.

Clarification of total price

In its letter of rejection, AFM contends that "*no rectification*" is allowed in the Financial Offer. While this might appear to be, *prima facie*, correct, this rule is less draconian than the Contracting Authority is making it out to be. First of all, while "*no rectification*" is allowed, clarifications are certainly allowed, even with regard to the financial offer. Furthermore, the General Rules Governing Tenders' provide a solution where the total can be arithmetically worked out and/or corrected if, as, and when necessary/applicable. (Clause 17.1).

In other words, contrary to what is suggested in the letter of the 4th February, the Contracting Authority's hands are not tied, and a degree of flexibility is allowed.

It is submitted that in its explanation to the Contracting Authority, Leonardo did not attempt to make any "*correction*" to its financial bid, but merely sought to explain the rationale behind the figures indicated, and why they should be considered to refer to the price for one year, assuming that thirteen sessions are required for one year. This is a clarification which is not only allowable in terms of law but is also in line with the principle of proportionality, a concept which in the context of public procurement has repeatedly been recognised by the CJEU, by the PCRB and by the Court of Appeal. In this regard, Objector refers to the locus classics in the Maltese context, namely *Schembri Barbros Limited et v Il-Korporazzjoni għas-Servizzji tal-Illma, Id-Direttur Generali (Kuntratti)* u *Rockcut Limited* but also others, such as *Pharma. MT Limited v Direttur tal-Kuntratti et.*

This principle requires that a bid which is otherwise in line with specifications should not be summarily rejected on the basis of a mistake or on the basis of missing information, when this can be remedied by referring to the rest of the tenderer's offer and/or by virtue of a clarification and/or by having the Evaluation Committee make the correct arithmetical calculation.

This Board has itself delivered several decisions where, on the basis of the principle of proportionality, it allowed corrections and/or clarifications in such situations, as long as it was clear that the bidder was not

seeking some undue advantage from the situation. Reference is made, for instance to the decision in **Case Number 1444** (*Professional Services of a Contracts Manager for the L-Ikkin Local Council*).

In this regard, Objector cannot but note that the misunderstanding in connection with the Financial Bid did not arise out of any "*mistake*" or negligence on its part. On the contrary, it was, unfortunately the lack of clarity of the tender requirement and the lack of flexibility in the financial bid sheet (which does not allow any explanation but only inputting of figures) which led to this unfortunate situation. Leonardo's bid, which is cheaper than that of the recommended bidder, should not be discarded and/or prejudiced when, for the reasons explained, it is certainly not at fault.

Contracting Authority is incorrect when it states that Leonardo submitted a "partial offer"

In its letter of rejection, AFM states:

Reference is made to Section 1 para 3.2 of the procurement document where; tenderers must offer the whole of the quantity or quantities indicated for each lot. Under no circumstances will tenders for part of the quantities required be taken into consideration.

Section 1, para 3.2 of the tender document, which is being quoted in the said letter, states:

The tenderer must offer the whole of the quantity or quantities indicated for each lot. Under no circumstances will tenders for part of the quantities required be taken into consideration. Each lot may form a separate contract and the quantities indicated for different lots will be indivisible.

In the light of the above, it would appear that AFM's reasoning is as follows:

- In the financial bid form, Leonardo indicated the total costs for 1 year;
- This means that it is making a "partial offer", that is, committing itself only for 1 year;
- This is in breach of 3.2, since Leonardo is bidding only for a "part" of Lot 1 - i.e. 1 year out of three.

This reasoning is clearly wrong. In its explanation, Leonardo clarified that the total cost indicated refers to the cost for one (1) year, assuming thirteen training sessions and that therefore the cost for three (3) years requires multiplication by three. This, however, certainly does not mean that that Leonardo was only committing for one year. On the contrary, Leonardo's technical offer, specifically Annex 2 (attached for

ease of reference as Document L7) makes it very clear that Objector is committing to offering precisely what is being requested, that is, training sessions over the course of three years.

Therefore, AFM's statement that Leonardo is making a "partial offer" is clearly wrong and contradicted but the contents of the bid itself.

Conclusion and Request

As has been noted, Objector's financial bid is for a total price of EUR 649,155.00. This is considerably cheaper than the offer of the recommended bidder, which is priced as €869,700.00.

This leads the Objector to conclude that if Leonardo's bid is considered as financially compliant, as we submit it should, then it would be considered the cheapest compliant offer.

This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on 24th February 2025 and its verbal submission during the hearing held on the 27th May 2025, in that:

At evaluation stage, the evaluation board may only send only one clarification/rectification related to the subject matter, where the bidder is given five (5) working days to reply. Once a reply is received, (it is to be noted, this is always done through the "*e-PPS*" portal), the evaluation board will take its decision.

For instance, in this case, the evaluation board had sent a clarification to the Objector, regarding the total contract amount/value as offered by the Objector, as it was considered abnormally low when compared to the estimated procurement value. The Objector, in his reply, apart from declaring that his offer is for one year only, changed the total amount. The nature of the prescribed system does not allow the evaluation board to send another financial clarification to the bidder regarding the total amount. Bidders are well aware of this procedure.

Hence the AFM submits that any clarifications which the Objector may have had, had to be done at pre-opening of offers stage, simply and purely due to the nature of the system, which is well established, and imposed on contracting authorities issuing tenders.

Indeed, at pre-opening of offers stage, the AFM addressed several clarifications, uploaded on the *e-PPS* portal, to be seen by potential bidders, further to queries raised by the Objector and other service providers. These clarifications are documented, per Clarification Note No. 2, dated the 2nd of May 2024, herein

attached and marked as "AFM 4". The AFM wishes to direct the Board's attention that this is an important document, which will be referenced in the AFM's rebuttals to the Objector's allegations.

Notwithstanding the clarifications received throughout the process (per Doc AFM 4), as well as the instructions found in the procurement document and supplementary documentation complimenting the latter, namely; the Financial Bid Form in excel format (attached and marked as "AFM 5"), where it was clearly stated that the "Quantity" tab related to the amount of pilots, and not "events" (the latter, which is a weak argument the Objector is trying to perpetuate) and "Section 1: Instructions to Tenderers", in particular Article 3.2 of same (herein attached and marked as "AFM 6") stating that the tender must offer the whole of the quantities indicated in each lot, where under no circumstances will tenders for part of the quantities required be taken into consideration, the Objector, whilst duly informed of the criteria, did not comply with same award criteria, i.e.: that the bidders were to clearly indicate their quote for the services of recurrent simulator training for the AFM's pilots. Therefore, the contract was awarded to another bidder who was both financially as well as technically compliant. The AFM shall move on to explain its reasoning in more detail, as per the below:

1.1. Opening of Offers

Leonardo S.p.A. - Tender ID 000211373 submitted their offer together with three (3) other service providers for Lot 1. Offers were as follow;

1.2. Evaluation

Offer submitted by Leonardo S.p.A. - Tender ID 000211373 was evaluated as follows;

ELIGIBILITY

No subcontracting has been indicated. No clarification /rectifications were deemed necessary. Offer was deemed administratively compliant.

TECHNICAL

Economic operator filled in and confirmed the Technical Offer Questionnaire as indicated in Section 1 para 5 C - Specifications of the procurement document. No clarifications were deemed necessary hence, offer was deemed technically compliant.

FINANCIAL

The total price offer is priced at €216,385.00 excluding VAT and was considered as an '*Abnormally Low Tender*' since it was substantially lower than the estimated value of the tender as determined by the AFM following market research. For this reason, the economic operator was requested to justify/ explain, through the *e-PPS* system, as to how he was able to submit such a tender for all the necessary sessions for thirteen (13) personnel for the period of three (3) years, hence explain with relevant information his financial offer, in terms of the Public Procurement Regulations, S.L. 601.03 regulation 243.

The Economic Operator replied that the "*Financial Bid Form*" which was made available on the "*e-tenders*" web portal at the time of the tender release was in a non-modifiable form with the only blank space that could be filled in was the "*Unit Cost including Taxes/Charges*". The cells named "*Total*" and the cell named "*Grand Total*" were already filled in with an automatic mathematical formula based on the unit price offer. In the absence of further clarifications and from the economic operator point of view, the "*Unit Cost*" has been intended as the price of one single Recurrent Event, for one pilot as the non-modifiable cell with the Quantity (number of pilots) was already set to thirteen (13).

Economic operator continued that there was neither space, nor indication (an argument which shall be rebutted), to include the total price of three (3) years (i.e. for a total of thirty-nine (39) recurrent events).

Leonardo Helicopters did not modify the content of the official excel form and included the tender price for one single Recurrent event, for one pilot, equal to €16,645.00. As a result of the mathematical formula already present in the excel file, the total price for thirteen (13) Recurrent events is equal to €216.385.00.

The price for thirteen (13) Recurrent events for three (3) years, for a total of thirty-nine (39) Recurrent events, is equal to €649,155.00. Reference is made to Section 1 para 3.2 of Doc AFM 6, where; tenderers must offer the whole of the quantity or quantities indicated for each lot. Under no circumstances will tenders for part of the quantities required be taken into consideration. (added emphasis)

In his reply, the economic operator declared that the total price offer submitted is for 13 recurrent events for one year not for 13 pilots for the period of 156 weeks (3 years). In the same clarification, economic operator also declared that the total amount for the whole contract period is EUR 649,155.00 not EUR 216,385.00.

The Financial Offer is dictated by the provisions of Article 3, Section 1 of Doc AFM 6, hence, no rectifications to the financial offer could be allowed. Due to the Operator's actions, his offer was deemed financially non-compliant.

1.3. Final recommendations by the Evaluation Board

The AFM Evaluation Board members checked all documentation and confirmed that the account used by each bidder belongs to the bidder who submitted the offer. Due to the fact that Leonardo S.p.A was not financially compliant, the AFM Evaluation Board recommended that the award of the contract should go to a competitor who was compliant on all counts, including being within the AFM's parameters for its budget for this tender.

1.4. Rejection of Offer

The Objector's offer was therefore not acceptable for the evaluation board as;

1. With reference to Section 1 para 3.2 of Doc AFM 6, tenderers must offer the whole of the quantity or quantities indicated for each lot. The document clearly states that under no circumstances will tenders for part of the quantities required be taken into consideration. The offer submitted by the Objector covers only one year out of the whole period of three (3) years the AFM was seeking, hence, could not be accepted. It is reiterated that the Objector was made well aware that the AFM was seeking quotations for 13 pilots to receive training over a three (3) year period, as evidenced through Doc AFM 4. Therefore, how could the Objector expect the AFM Evaluation Board to twist and bend the rules in its favour, as he is expecting in his Letter of Objection?
2. Response to clarification raised by Leonardo S.p.A. at Bidding stage, per Doc AFM 4, clearly indicated that there will be thirteen (13) personnel receiving training for the first year and thirteen (13) personnel receiving training for the second year (assuming there are no retirements - which again, is not in the AFM's control). For the third year, the AFM explained that there may be a slight increase from the second year, but not exceeding two (2) additional personnel - this again clearly shows that the object of the tender in question was for a contract for its pilots to receive training over a three (3) year period. It is to be noted and duly emphasised that this information was passed to the Objector at pre-evaluation stage. The Objector cannot possibly find an excuse, at this stage no less, that *"the tender document does not indicate the total number of pilots to be trained over the period of 156 weeks"*, or that the Objector's bid is not a partial offer! It was solely and totally up to the Objector to list the price it was ready to quote for, on the tender documents which, in themselves were self-explanatory, and should any doubt have arisen, the Objector was free to request clarifications from the AFM, as it clearly had no trouble in doing in other circumstances, and made ample use of the possibility to request information on this subject and others at pre-evaluation stage (kindly vide

Doc AFM 4). The Objector had all the information required at hand, listed the price it was ready to offer, and did not find it necessary to seek clarification on the subject matter.

On the point raised by the Objector that the AFM was "*non-committal*" on its projections for the amount of pilots who would be attending courses in a year or two years' time, the AFM respectfully submits that it should be quite obvious to all and sundry that those who employ workers, and therefore, are exposed to issues concerning human resources, that in this case, the AFM, could never provide an exact figure of personnel who will be in its employment for the coming two or three years (and, in this case, willing and eligible to undertake such a specialised course!). The AFM can never exclude potential pilot departures, resignations etc, instead, it chose to be responsible, *qua*, conservative in its estimates, and shared its possible concerns with the Objector - concerns which led to the AFM being maligned as "*non-committal*" by the Objector!!

Contrary to being "*non-committal*", the AFM stated that it could confirm the number of pilots who shall be attending the training course in question, for each year in advance. As a rough estimate, the AFM anticipated conducting between thirty-five (35) and forty (40) courses over the next three years, information which was shared with the Objector, per Doc AFM 4. Reference is also made to Section 2 of the Procurement Document (Doc AFM 6), and its Article 26. 1 which states that the Contracting Authority is bound to procure eighty *per centum* (80%) of the award contract value hence, the AFM's clarification response to the Objector was clear and correct.

Furthermore, if the clarification response at bidding stage was not clear for the economic operator, the same economic operator could have easily requested another clarification, as it had indeed chosen to do for other issues (vide Doc AFM

3. Doc AFM 5 clearly says that unit price is to be "*per pilot*", and never mentioned that it had to be "*per recurrent event*" (as the Objector erroneously and unilaterally chose to interpret it). The Objector was aware of what the AFM was looking for, however, unilaterally, chose to insert the price for what it is referring to as "*recurrent events*". Thereafter, and in accordance with Article 3 of Section 1 of the Procurement Documents (which, it is to be noted, were in the Objector's possession all along, as they were also attached to the Objector's Letter of Objection), the Objector was well aware that under no circumstances will tenders for part of the quantities required be taken into consideration. The offer cannot be modified. Hence, the Objector's offer could not be accepted by the evaluation board.

4. Moreover, it is to be noted that in its financial offer, the Objector amended the Financial Bid Form by adding a title page and some headers and footers (herein attached and marked as "*AFM 7*"). Therefore, it stands to reason, that contrary to point 2.0 (iv) of the Letter of Objection, since the Objector clearly found no technical difficulty in modifying the Financial Bid Form, including its company headers, footers, logos and title pages, it could have also easily explained its offer by adding the necessary information and/or explanation to the course of events he has now decided to input in his Letter of Objection - this could have been done before the fact. Alternatively, if Leonardo S.p.A. really was not convinced with the efficacy of the bid submitted, there was nothing stopping Leonardo from submitting another offer with the total price of €649,155.00 to play it safe. This once again, is evidence of the Objector trying to turn the proverbial wheel on the contracting authority and trying to blame the AFM for its own shortcomings.

5. From the technical aspect of the tender, Section 3 - Terms of Reference/specifications (Doc AFM 6) para 2.1 of the procurement document says; The overall objective of the project is to have Pilots current on the AW139 Helicopter and Beechcraft KingAir B200 as per EASA and/or FAA standard. Para 4.1 says; The AFM has its crews certified by the aircraft manufacturer and has since maintained the flight crew current as per EASA and FAA standards. The Contracting Authority is seeking to further maintain this currency for the existing pilots and the new ones for a three (3) year period through the requisite Simulator Training. EASA standards and FAA standards are self-explanatory. Both expire after a year hence, with regards to the contract execution period (3 years) training must be conducted once a year for each pilot. This is once again evidence that the tender requirements were well explained by the AFM to the Objector - the latter being an economic operator bidding to win a tender, because it is technically compliant to offer these services to the contracting authority.

Therefore, it is incomprehensible, to the AFM, that the Objector is on the one hand, maintaining that it is technically compliant to offer the services being the subject of this tender, yet on the other hand, is feigning ignorance, and stating that the AFM's issuance of the tender was not clear! The Objector's arguments are, within themselves, contradictory to one another!

Therefore, and even from the reading of the technical aspect of the tender, it was amply clear to all bidders, and it should have been amply clear to the Objector, what the AFM was looking for when it issued the tender in question.

2. Reasoned replies to the Objector's Grounds for Appeal

The AFM shall now move to reply to the Objector's grounds for appeal. Due to the nature of the contention surrounding this tender, the subjoined may contain repetitions to the arguments outlined *supra*, and vice versa. The AFM respectfully requests that the arguments outlined in this Reasoned Letter of Reply are taken as a whole, as arguments directly rebutting the Objector's allegations can be found in both sections and are equally important.

2.1. Clarifications were afforded to the Objector:

- a. What is perhaps the crux of the matter, is the fact that a prospective bidder is afforded the opportunity to clarify any issue with the contracting authority, which may have seemed unclear, at the stage before it was expected to submit its bid. Indeed, the Objector made ample use of this opportunity, and replies were issued for each and every query raised. In fact, the following are some examples of such, as can be found in Doc AFM 4:

"Q1.

With reference to requirement 3.B.i.1.a. (Course Specifications): Could you please confirm that the number of Recurrent to be provided has to be intended as No.13 Recurrent Courses per year (so No. 39 courses in total for 3 years)?

A1.

In 2024, we have thirteen (13) personnel available for simulator sessions. In 2025, assuming no retirements, the same number of thirteen (13) personnel will be available. Looking ahead to 2026, there may be a slight increase from the 2025 number, but not exceeding two (2) additional personnel. Therefore, we cannot provide an exact figure at this time due to potential pilot departures, but we can confirm the number for each year in advance. As a rough estimate, we anticipate conducting between thirty-five (35). and forty (40) courses over the next three years." (emphasis added)

Therefore, contrary to the unfounded allegations raised in the Objector's Letter of Objection (ex: page 3, point 2.0 para i; ii et), the Objector did have a clarification, the AFM's statements were not non-committal, rather, the AFM explained that there could be instances where the number of pilots attending courses may vary from the set number of thirteen (13), due to reasons beyond the AFM's control as an employer (ex: resignations and retirement, which cannot be helped). It was also made amply clear, both from the procurement document and financial bid form (vide for example, Doc AFM 5), that the Objector was

expected to provide a unit price for training per pilot, for three years. This expectation was also clearly spelled out in the above para, extracted from Doc AFM 4, which, it is being emphasised here, and repeated, was provided to the Objector before the Objector submitted his bid.

Therefore, regardless of the frivolous arguments put forth by the Objector, the Objector was indeed made acutely aware of the fact that the expectations of the AFM Evaluation Board for the award of this tender was to assess economic operators on the award criteria, and that the contract awarded was to be a three-year contract, for thirteen (13) pilots to receive recurrent flight training.

b. Further confirmation that the Objector indeed was aware that the tender was designed for a three-year period contract, is the following extract from Article 18, Section 2: Special Conditions, herein attached and marked as AFM 6:

"18.2 The period of this contract is for one-hundred and fifty-six (156) weeks"

This is a document which the Objector had in hand, as it was also attached to the Letter of Objection! The same period of execution was repeated in article 5.2 "Commencement Date and Period of Execution" of Section 3 Terms of Reference, also attached to the Objector's own Letter of Objection.

c. Another piece of evidence which must be repeated in this segment, rebutting the Objector's feigned ignorance of the AFM's requirements, and its protestations that the tender documentation was unclear is Section 3 - Terms of Reference/specifications (Doc AFM 6) para 2.1 of the procurement document.

The Objector was made aware that the overall objective of this tender was to have pilots currently serving on the AW139 helicopter and the Beechcraft KingAir B200 per EASA and/or FAA standard. Para 4.1. of same outlines that;

The AFM has its crews certified by the aircraft manufacturer and has since maintained the flight crew current as per EASA and FAA standards. The Contracting Authority is seeking to further maintain this currency for the existing pilots and the new ones for a three (3) year period through the requisite Simulator Training. EASA standards and FAA standards are self-explanatory. Both expire after a year hence, with regards to the contract execution period (3 years) training must be conducted once a year for each pilot. Therefore, by what stretch of the imagination, can the Objector now feign ignorance, as to AFM's requirements and the final objectives of this tender? At which point could the tender requirements be deemed "unclear"?

It is manifestly clear that the Objector's intent was indeed to make a financial offer for one year of training, which is contrary to what the contracting authority required. It is also to be noted that no clarification was forthcoming by the Objector at pre-bidding stage, as to its decision to input the value for one year and not for the three years requested by the contracting authority, rather, it is only now making excuses as to the fact that "*clarifications*" should have been allowed.

- d. The Objector's argument that it was not allowed to explain its financial bid is a weak argument at best. On the contrary, the Objector was more than able to edit his financial bid form to include the Leonardo S.p.A company logo, and make other adjustments, some of a cosmetic nature, however, for some reason unbeknownst to the AFM, the Objector was allegedly "*not able*" to explain his bid (vide Doc AFM 7, being the Objector's Financial Bid, complete with logos and other cosmetic changes pertaining to the Objector's company).
- e. Moreover, and without prejudice to the above, the fact that no rectification can be allowed further to the financial offer is being reiterated. This is a rule which the AFM did not invent, rather, it is a standard rule imposed when issuing a tender. The Objector here appears to expect the contracting authority to twist and bend these rules to suit said Objector's purposes. It is reiterated that the Objector had, on hand, a copy of Doc AFM 6, which contains clear instructions to tenderers, in which document lies the provision of article 3 of Section 1, stating that under no circumstances shall tenders for parts of the quantities required be taken into consideration. This principle is moreover strengthened by point 3 in the Notes to Clause 5 of the same document, on the subject of Selection and Award requirements, stating that no rectifications shall be allowed, only clarifications are allowed. The Objector may wish to note that it is not up to the AFM to make these rules, however, it is the AFM's responsibility as a governmental entity, to follow them, and from the wording laid out thereat, there is certainly no "*degree of flexibility allowed*"!

In essence, the tender documentation was indeed self-explanatory, and even if, in the extraordinary event that the Objector really did not manage to understand the tender documentation, the AFM had provided a detailed explanation of what was expected, as can be noted from the explanations and references noted *supra*, and even if that was not enough, should the Objector have had any other doubt, it could easily have made other requests for clarification to the AFM at bidding stage, as it had found no impediment to do, several times before.

This did not happen; hence, the AFM Evaluation Board was bound to evaluate what it had on paper, and had no other choice but to note that from the documentation submitted, the Objector was not financially compliant.

2.2. The Objector's offer was indeed a partial offer

The AFM would like to respond to the second ground of appeal raised by the Objector, in that according to the Objector, the AFM was incorrect in rejecting its bid on the basis of it being a partial offer and that it was not a "partial offer". Due to the nature of the Objector's arguments, as well as the explanations the AFM deems it necessary to provide, there may be an overlap between segments of this Letter.

- A. The Objector's financial bid was for one (1) year of training. It is reiterated that it was made amply clear to the Objector (through both the documents made available to it in order to submit its bid, as well as through the multiple clarifications afforded to it, as can be evidenced through Doc AFM 4 and the documentation issued by the AFM, attached to the Objector's Letter), that the financial bid from economic operators was to cover the training of thirteen (13) pilots over a period of three (3) years. The AFM's intent is also covered through the title framed for the tender in question, being : *"Tender for the Services of Flight Simulator Training for Rotary and Fixed Wing Pilots to the Armed Forces of Malta."*

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.

The principal grounds of the objection revolved around the evaluation of the Objector's financial offer, specifically the rejection of their bid as financially non-compliant.

Clarification Procedure under Public Procurement Rules

The Board notes that under the applicable procurement regulations, the Evaluation Committee may issue only one rectification request related to the subject matter of the offer.

In the present case, the Evaluation Committee had flagged the Objector's offer as potentially abnormally low. Consequently, a request for clarification was duly sent through the *e-PPS* portal, to which the Objector responded.

Assessment of the Objector's Financial Offer

Upon analysis, it was determined that the Objector's offer – as submitted – was based on pricing for one year only, despite the clear instructions in the tender dossier requiring pricing for a three-year contract.

The Objector's clarification sought to amend the total contract value post-submission, indicating that the price of €216,385.00 was for one year and that the actual value should be €649,155.00. However, this adjustment amounts to a substantive modification of the financial offer and not a mere clarification.

The financial offer form provided by the Contracting Authority, including its automatic calculation functions, was structured to reflect the full scope of the procurement: that is, recurrent simulator training for thirteen (13) pilots over a three-year period, as per Section 1, Article 3.2 of the procurement document (Doc AFM 6). This article unambiguously stated that tenders must cover the full quantity required and partial offers would not be considered.

Thus, the Objector's submission, offering a price covering only a fraction of the contract duration, constituted non-compliance with the financial requirements of the tender.

Pre-Opening Clarifications and System Transparency

The Board also acknowledges that during the pre-opening stage, the Contracting Authority issued several clarification notes via the *e-PPS* portal, including Clarification Note No. 2 dated 2nd May, 2024 (Doc AFM 4). These documents addressed questions raised by the Objector and other bidders and were accessible to all potential bidders.

These pre-opening clarifications provided guidance on how to interpret the financial bid form and the associated quantities. The Objector had ample opportunity to seek redress or further clarification at this stage. It is therefore not acceptable for the Objector to now claim ambiguity in relation to the bid structure and form.

Evaluation Board's Final Recommendation and Justification for Rejection of Offer

(a) Evaluation Board's Verification and Recommendation

The Board takes note of the comprehensive verification carried out by the AFM Evaluation Board, which confirmed that the accounts used for tender submission corresponded to the respective economic operators. The Evaluation Board, upon concluding its assessment, confirmed that the offer submitted by Leonardo S.p.A. (the Objector) was not financially compliant with the tender requirements.

Accordingly, the Evaluation Board recommended that the contract be awarded to a competitor whose bid met all administrative, technical, and financial requirements and fell within the budgetary constraints established by the Contracting Authority. This recommendation is both reasonable and in line with the core principles of procurement—namely transparency, equal treatment, and best value for money.

(b) Justification for Rejection of the Objector's Offer

The rejection of the Objector's offer was premised upon several clearly articulated and substantiated grounds:

Non-Conformity with Tender Scope and Duration

In accordance with Section 1, paragraph 3.2 of the procurement document (Doc AFM 6), tenderers were unequivocally required to offer the whole of the quantities indicated for each lot. The document specifically states that partial offers shall not be considered under any circumstance. The Objector's financial offer was explicitly based on the provision of services for only one year, in stark contrast to the required three-year contract for training of thirteen (13) pilots.

The Board agrees that the scope of the tender, including duration and quantities, was well defined and that the Objector was sufficiently informed through the published tender documents and pre-submission clarifications (Doc AFM 4). Accordingly, it is unreasonable and procedurally impermissible to expect the Evaluation Board to disregard these requirements or re-interpret them post-submission in favour of the Objector.

Pre-Award Clarifications and Disclosure of Quantities

The Contracting Authority clearly communicated its projections regarding the number of pilots to receive training over the three-year period through responses provided in Clarification Note No. 2 (Doc AFM 4). These projections were based on then-current personnel estimates and transparently stated that training would be required for thirteen (13) pilots annually, with a possible marginal increase in the third year.

The AFM further clarified that while it could not guarantee precise personnel numbers due to inherent operational uncertainties (such as retirements or resignations), its estimate was conservative and its intent clear. This level of disclosure, and the Contracting Authority's caution in projecting figures, cannot reasonably be construed as "non-committal." Rather, the Board views the AFM's conduct as prudent and consistent with the realities of workforce planning.

Objector's Responsibility to Seek Clarification

The Objector had multiple opportunities to seek further clarification prior to submission of its financial offer. The *e-PPS* platform was open to all economic operators, and indeed the Objector had actively engaged with the Contracting Authority during the pre-opening stage on such and other matters. It is therefore contradictory and unconvincing for the Objector to now allege ambiguity or lack of clarity regarding the contract's scope.

If any doubt remained regarding the quantity, duration, or structure of the required services, it was incumbent upon the Objector to raise such queries prior to submitting its final bid. Having failed to do so, and having submitted an offer that materially diverges from the scope of the procurement as defined, the Objector cannot now shift responsibility onto the Contracting Authority or seek remedial interpretation of binding terms.

Attempt to Revise Financial Offer Post-Submission

It is in the Board's view, that the Objector's clarification response attempted to retroactively redefine the scope of its submitted financial offer, increasing the total contract value from €216,385.00 to €649,155.00. This goes beyond a clarification and amounts to a substantive amendment to the offer, which is not permissible under procurement law.

The bid as submitted, must be assessed *ut sic*; any modification after the deadline compromises the integrity and fairness of the procurement process. The Board concurs with the AFM's conclusion that such a revision could not be accepted under the applicable legal and procedural framework.

Clarity of Procurement Documentation

The procurement documents, including the Financial Bid Form (Doc AFM 5) and the Instructions to Tenderers (Doc AFM 6), clearly defined the scope of services and the method for completing the financial offer. The automatic calculation functions embedded in the Financial Bid Form ensured uniformity and eliminated manual miscalculation. The Objector's interpretation of the financial template—claiming it represented only a one-year cost—cannot be reconciled with the structure and instructions explicitly provided.

Moreover, Section 2, Article 26.1 of the procurement document further clarified that the Contracting Authority was bound to procure at least eighty percent (80%) of the contract value, reinforcing the long-term commitment inherent to this tender.

On Pricing Interpretation and Partial Offers

The AFM Evaluation Board maintains that the Financial Bid Form (Doc AFM 5) explicitly required the unit price to be submitted *per pilot* for the entire contract duration, and not *per recurrent event*, as Leonardo S.p.A. erroneously interpreted. This misinterpretation is not trivial — it fundamentally misaligned the Objector's offer with the scope of the tender, which unambiguously required pricing over a three-year contract duration for thirteen (13) pilots annually, in accordance with EASA/FAA annual recurrent training requirements.

The unilateral decision by the Objector to base its price on a one-year interpretation, despite possessing all the necessary documentation and clarification replies, represents a material non-compliance. Under Article 3 of Section 1 of the Procurement Documents, partial offers were expressly prohibited and were deemed non-responsive *ab initio*. Therefore, the AFM Evaluation Board acted within its remit and obligation by disqualifying the offer.

Modification of the Financial Bid Form

The AFM's assertion that Leonardo S.p.A. was technically capable of editing the Financial Bid Form — as demonstrated by the inclusion of company headers, logos, and additional pages (Doc AFM 7) — further undermines the Objector's claim that it was unable to clarify or structure its offer in alignment with the procurement's requirements.

The capacity to alter form layout but failure to include essential financial detail raises serious concerns regarding the Objector's adherence to the tender instructions.

Moreover, the procurement rules cited (Clause 5, Notes to Selection and Award Requirements) clearly prohibit post-submission rectifications. Clarifications may be sought before submission, but not after the financial offer has been opened. Leonardo failed to avail itself of this mechanism despite having made prior clarifications on other aspects of the tender. This procedural safeguard is grounded in transparency and equal treatment and cannot be waived post hoc.

Technical Requirements and EASA/FAA “Currency”

From a technical compliance standpoint, the tender documentation, particularly Sections 2.1 and 4.1 of Doc AFM 6, clearly indicated the goal: maintain EASA and/or FAA currency for AFM pilots across a continuous three-year period. Currency, by definition, under both EASA and FAA standards, requires annual recurrent training. Thus, it was an inescapable interpretation that training had to be conducted annually per pilot, a point also emphasized in AFM's responses to pre-bid clarifications (Doc AFM 4).

It is therefore contradictory and untenable for the Objector to argue both that:

- It is technically compliant and understands EASA/FAA regulatory frameworks; and
- It did not interpret the requirement for three annual training cycles across the duration of the contract.

Such contradictory assertions erode the credibility of the Objector's appeal and suggest either a failure to adequately analyse the tender requirements or a deliberate strategic choice that backfired.

Clear Clarifications and Documentation Provided

AFM provided ample pre-bid clarifications (Doc AFM 4), wherein it disclosed the likely number of pilots per year (13) and the estimated total number of training sessions (35–40 over three years). While the precise number of trainees could vary slightly due to normal HR fluctuations, such as retirements, the AFM committed to providing annual confirmation of participants in advance.

This disclosure was sufficiently detailed to enable any diligent economic operator to formulate a compliant bid. Moreover, Article 18.2 of Section 2, Special Conditions, explicitly stated the contract duration was 156 weeks, and this was reiterated in Article 5.2 of Section 3. The Objector had access to these documents, and their arguments suggesting a lack of clarity are inconsistent with the evidence.

Final Position on Compliance and Procedural Integrity

The AFM Evaluation Board followed the established legal and procedural rules that govern public procurement.

In public procurement, form and content matter equally. The Objector had multiple opportunities to align its bid, seek clarifications, or even submit an alternative offer. It failed to do so. The AFM cannot accommodate unilateral deviations or post-submission reinterpretations without breaching core procurement principles such as equal treatment, transparency, and legal certainty.

Clarity of Tender Requirements Reaffirmed by Preferred Bidder

On a concluding note, the Board draws attention to the final submissions made by Mr Hanspeter Baserga, the Contracts Manager representing the preferred bidder, *Atlantic Airways Aviation Academy*. In his submissions, Mr Baserga unequivocally affirmed that the terms and conditions of the tender were clear, comprehensible, and left no room for ambiguity.

He further emphasised that the clarity and specificity of the tender requirements allowed *Atlantic Airways Aviation Academy* to submit a fully compliant and comprehensive bid. This precise adherence to the tender specifications was a determining factor in the selection of *Atlantic Airways Aviation Academy* as the preferred bidder.

Mr Baserga's statements serve to conclusively dispel any remaining suggestion of uncertainty or ambiguity alleged by the Objector. The ability of at least one bidder to correctly interpret and respond to the tender requirements is compelling evidence that the procurement documentation was indeed intelligible, unambiguous, and capable of being understood and complied with by diligent economic operators.

Accordingly, the AFM Evaluation Board reiterates that the Objector's claim of unclear tender documentation lacks merit and stands contradicted not only by the tender documents themselves and the pre-bid clarifications provided, but also by the successful and compliant participation of other economic operators, including the preferred bidder.

In conclusion, the Board finds that the Contracting Authority acted in full accordance with the law and the principles of good administration. The evaluation process was objective, transparent, and consistent with the terms and conditions of the procurement. The Objector's bid was rightfully deemed non-compliant due to its failure to align with the clearly articulated scope, duration, and quantity requirements.

Therefore, this Board does not uphold Appellant's grievances.

The Board,

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

- a. Not to uphold Appellant's Letter of Objection and contentions;
- b. Confirms the decision of the Evaluation Committee in its entirety;
- c. Directs that the deposit paid by Appellant not to be reimbursed.

Dr Vincent Micallef
Chairman

Mr Lawrence Ancilleri
Member

Mr Keith Victor Grech
Member