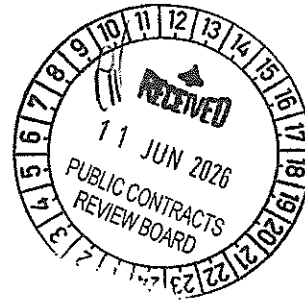


Public Contracts Review Board  
Notre Dame Ditch  
Floriana FRN 1601  
Malta



11<sup>th</sup> of June 2026

Dear Honourable Board,

**Re: CT2021/2026 - Framework Contract for the Provision of Temperature-Controlled Transportation Services by Drone for Routine and Critical Medical and/or Pharmaceutical Consignments between Malta and Gozo Healthcare Venues for the Ministry for Health**

Submitted via email to: [info.pcrb@gov.mt](mailto:info.pcrb@gov.mt)

**Reply by Seasus Limited (C 29821)**

- i. Seasus Limited, Ataria Systems Ltd. (the "Recommended Bidder"), submits the following reply as an interested party in these proceedings.
- ii. The Department of Contracts (the "DOC") issued a call for tenders for the provision of temperature-controlled drone transportation services for routine and critical medical and/or pharmaceutical consignments between Malta and Gozo healthcare venues for the Ministry for Health (the "Tender").
- iii. Miracles Unmanned Solutions JV (the "Appellant"), filed a formal objection against the decision communicated on 18<sup>th</sup> of May 2026, by which its offer was disqualified, and the Tender was recommended for award to the Recommended Bidder.
- iv. The Recommended Bidder respectfully submits that the objection should be rejected in its entirety. The objection is, first and foremost, a disguised and belated challenge to the Tender specifications which the Appellant chose not to challenge at the appropriate stage. Without prejudice to this plea, the technical and regulatory premises on which the objection is founded are unsupported by the Tender documentation and misconceive the structure of the procurement.

## I. PRELIMINARY PLEA: THE OBJECTION IS A BELATED CHALLENGE TO THE TENDER SPECIFICATIONS AND IS INADMISSIBLE IN LIMINE

1. That framed as an objection to the recommendation of award and to the Appellant's disqualification, is in substance an objection to the Tender specifications themselves – *“issue at the heart of this procurement: whether the contracting authority has designed and applied a suitability framework that is fit for purpose, technically coherent, and capable of identifying the operator best placed to deliver safe, compliant, and effective drone-based medical logistics services between Malta and Gozo<sup>1</sup>”*. It should be noted at the outset that the assessment and determination of which operator is best placed to satisfy the specifications set out in the procurement documents falls within the remit of the Contracting Authority. The Appellant contends that the Recommended Bidder is unsuitable on the premise that it would not be possible for any economic operator to fulfil the scope of the procurement in accordance with the specifications issued by the DOC.
2. The Appellant alleges that the suitability requirement, the regulatory framework adopted by the Tender, the payload assumptions and the evaluation structure were technically defective, internally contradictory and inadequate to identify a suitable operator.
3. Such grievances do not properly fall to be determined at this stage of the process. The present proceedings are proceedings brought after the closing date for the submission of offers, following the recommendation of award, and on the basis of Regulation 270 of Subsidiary Legislation 601.03 (the “SL”). The purpose of this appeal is not to redesign the Tender or to adjudicate, for the first time, upon alleged defects in the specifications which were published and available to all bidders before tenders were submitted. In substance, the Appellant is inviting this Honourable Board to direct the Evaluation Committee to reconsider the Appellant’s tender submission on its merits, by reference to the technical and regulatory arguments advanced in the Appellant’s objection. Such request is premised on the Appellant’s assertion that the specifications contained in its Rectification Submission ought to be accepted as correct and necessary for the fulfilment of the procurement scope, on the basis that the specifications originally set out in the procurement documents were allegedly not fit for purpose.

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<sup>1</sup> Appellant reply, page 6.

4. Two factual matters warrant particular emphasis. First, the Appellant was fully aware of the relevant specifications prior to the submission of its offer. Secondly, upon receipt of the administrative rectification request issued by the DOC, the Appellant elected not to comply with the request, but rather to defend and maintain its position by advancing detailed technical and regulatory arguments to the contrary.
5. If the Appellant considered that the Tender adopted defective technical specifications, an incorrect regulatory pathway, ambiguous requirements, or an internally inconsistent suitability framework; the remedy was a reasoned application under Regulation 262 et seq. of the SL. In particular, allegations concerning defective technical specifications<sup>2</sup> or ambiguous tender requirements were capable of being raised before the closing date for submissions, within the timeframes established for remedies before the closing date of a call for competition.
6. The Appellant did not avail itself of that remedy. It instead participated in the procedure, submitted an offer based on the same Tender documentation, engaged in the clarification/rectification process, and only after disqualification sought to impugn the very requirements against which all bidders were evaluated.
7. That approach is incompatible with the principles of transparency, equal treatment, legal certainty and self-limitation. The Tender requirements formed the common framework by reference to which all bidders prepared their offers. To permit a bidder, after being found non-compliant, to challenge those requirements retrospectively would prejudice compliant bidders and undermine the integrity of the procedure.
8. The DOC correctly referred to the decision of the Court of Appeal in *All Clean Services Limited v. Ministeru għall-Edukazzjoni et*, decided on 10th January 2023, in which the Court confirmed, in substance, that an interested bidder who disagrees with a tender condition must use the remedies provided by the applicable regulations and cannot allow the process to run its course and then, after losing the contract, complain that the condition should not have been included.
9. Once the remedies available to challenge or seek amendment of the Tender specifications were not availed of within the applicable time-limits, the specifications

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<sup>2</sup> Appellant Reply, page 1.

remained the governing framework of the procurement procedure and continued to bind both the DOC and all participating economic operators. This is consistent with the principle affirmed by the General Court of the European Union in *Nexans France v. European Joint Undertaking for ITER and the Development of Fusion Energy (T-415/10)*, wherein the Court held that:

*"It must be borne in mind at the outset that where, in the context of a call for tenders, the contracting authority defines the conditions which it intends to impose on tenderers, it places a limit on the exercise of its discretion and, moreover, cannot depart from the conditions which it has thus defined in regard to any of the tenderers without being in breach of the principle of equal treatment of candidates."*

Accordingly, once the Tender specifications were published and remained unamended, the Department of Contracts was bound to apply them as issued. It could not, at evaluation stage, relax, reformulate or disregard a mandatory requirement in favour of one bidder on the basis that such bidder subsequently considered a different form of compliance to be sufficient or superior.

10. The objection is therefore procedurally untenable insofar as it seeks to attack the legality, adequacy and internal consistency of the Tender specifications through masking its approach as on which falls under Regulation 270 of the SL. On this basis alone, the objection should be dismissed *in limine*.
11. Without prejudice to this preliminary plea, the Recommended Bidder further submits that each substantive grievance is unfounded.

## **II. THE TENDER SPECIFICATION WAS NEITHER TECHNICALLY DEFECTIVE NOR ULTRA VIRES**

12. The Appellant's first grievance rests on the assertion that the operational requirements of the Tender necessarily require UAV operations outside the regulatory scope of a standard Light UAS Operator Certificate or Specific Category operational framework. This assertion is built on a false premise.
13. The Tender did not require only a 'standard Light UAS Operator Certificate ("LUC")', nor did it confine bidders to one rigid form of certification. Clause 5B(a) required the contractor to be in possession of an EASA-approved, or equivalent

regulatory framework, Operations Manual for Specific Category UAS operation and/or a LUC<sup>3</sup>. The requirement therefore expressly contemplated the Specific Category regulatory framework and equivalent regulatory arrangements.

14. The Tender also made clear that the selected contractor would remain solely responsible for drone operations and for obtaining all necessary regulatory approvals, including Transport Malta approvals, before commencing operations. The Terms of Reference further refer to BVLOS flights, SORA-aligned planning, operational authorisations and compliance with applicable aviation and safety requirements. The Tender was therefore not drafted as a simple open-category drone activity, but as a regulated aviation service to be delivered by an operator capable of meeting the applicable specific-category and national requirements.
15. The Appellant's reliance on a 25 kg Maximum Take-Off Weight (the "MTOW") threshold is therefore misplaced. A higher MTOM does not render the procurement unlawful or technically impossible. It means that the operation must be planned, authorised and conducted under the applicable regulatory framework. That is precisely why the Tender places responsibility on the contractor to obtain the necessary approvals and to demonstrate regulatory and operational maturity.
16. The Appellant's argument also depends on an assumed payload calculation which is not found in the Tender. The mandatory quantitative requirements are limited to:
  - (i) a minimum payload capacity of 10 kg under all operational conditions, inclusive of certified medical transport containers and passive cooling elements; and
  - (ii) a minimum cargo hold/internal volume of 10 litres. Additional marks for 15 kg and 20 kg payload capacities are add-on award criteria. They do not alter the mandatory minimum requirement and do not convert every mission into a 20 kg or 28 kg mission.
17. Nor does the Tender prescribe a 14 kg container, a particular container design, a specific insulation structure, or any mandatory configuration requiring two separate full-capacity containers to be carried simultaneously. The Appellant's conclusion that each drone must carry two 14 kg containers, and therefore a payload exceeding 28 kg before the aircraft weight is considered, is a unilateral engineering assumption and not a requirement of the Tender.

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<sup>3</sup> Tender document, page 5.

18. The requirement is limited to accommodating chilled consignments (2-8°C) and ambient consignments (15-25°C) simultaneously and in a segregated manner, while preserving the respective temperature conditions, avoiding cross-contamination, and maintaining operational integrity. It does not prescribe the payload configuration assumed by the Appellant, nor does it require any duplicated or cumulative payload calculation. The Appellant has, in effect, read into the requirement additional conditions which are not borne out by the procurement documents, based on its own interpretation that the mission could not otherwise be performed<sup>4</sup>. That interpretation is not supported by the tender process, given that other bidders were able to submit offers which complied with the same requirement and enabled missions to be performed.
19. It is also material and further to point 15, that the live-stream demonstration requirements refer to simulated medical payloads of at least 6 kg in total for each of two separate flights. This is inconsistent with the Appellant's assertion that the Tender necessarily contemplated a single 28 kg operational payload as the baseline requirement.
20. Once the Appellant's speculative payload assumptions are set aside, there is no internal contradiction between the suitability requirement and the operational requirements of the Tender. Accordingly, the Appellant's contention that the Tender specification was technically defective, internally contradictory, or ultra vires is unfounded and ought to be rejected. The Tender requirements were capable of being applied as published, and the DOC acted prudently, fairly, and correctly in assessing the Appellant's submission against those requirements. Consequently, this ground of objection discloses no basis upon which the evaluation process, or the recommendation issued in favour of the Recommended Bidder, may be impugned.

### **III. THE ALLEGED DISTINCTION BETWEEN OPERATOR CERTIFICATION AND HARDWARE CAPABILITY IS MISCONCEIVED**

21. The Appellant next alleges that the Tender addresses only operator certification and fails to address UAV platform capability. This grievance mischaracterises both the Tender structure and the applicable procurement framework.

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<sup>4</sup> Appellant's reply, page 3.

22. The SL requires a proper distinction between exclusion grounds, selection criteria, and award criteria. Selection criteria assess the capacity, suitability and standing of the economic operator. Award and technical evaluation criteria assess the proposed solution. The DOC was therefore entitled, and indeed required, to avoid conflating the operator's regulatory suitability with the technical scoring of the UAV platform.
23. The Tender follows that structure. Clause 5B(a) addresses regulatory suitability through the requirement for an EASA-approved Operations Manual for Specific Category UAS operation and/or a LUC. Clause 5B(c) addresses technical and professional ability through relevant experience. The technical evaluation, Key Expert requirements, literature submissions and live-stream demonstration then assess the proposed drone solution, including payload performance, cargo hold requirements, operational resilience, BVLOS capability, environmental tolerances, shock/vibration compliance, redundancy and safety systems.
24. Platform capability was therefore not omitted. It was assessed at the appropriate stage and through the appropriate criteria. The Tender expressly established minimum payload and cargo capacity requirements, awarded additional marks for enhanced payload capability, and provided for demonstrations and data to verify operational performance.
25. The Appellant's position is also internally inconsistent. It argues that hardware capability is the binding constraint, while also asserting that it operates UAV platforms which meet and exceed the Tender requirements. If such platform capability exists, the Tender cannot simultaneously be said to be structurally incapable of identifying capable operators.
26. This grievance should therefore be rejected.

#### **IV. THE APPELLANT DID NOT PROVE COMPLIANCE OR EQUIVALENCE WITH THE MANDATORY SUITABILITY REQUIREMENT**

27. The Appellant submits that it held higher-grade certifications or operational authorisations which should have been treated as equivalent or superior to the

requirements of Clause 5B(a). This argument cannot cure non-compliance with a mandatory suitability requirement.

28. If the Appellant possessed an authorisation, certification or regulatory framework which it considered equivalent or superior, it was for the Appellant to prove compliance at tender submission stage and, in any event, provide the rectifications requested by the DOC when deemed to be non-compliant. The Appellant's reasoning is misconceived insofar as it suggests that the tendering process ought not to proceed merely because the Appellant considers that an alternative regulatory pathway would have been preferable or more appropriate. That determination falls within the remit of the DOC and could only have been challenged in accordance with Regulation 262 et seq. of the SL, within the prescribed timeframes. The Appellant failed to avail itself of that remedy. In the absence of any timely challenge to the specifications, the Appellant is to be deemed to have accepted and acquiesced to the specifications as published in the procurement documents.
29. The Appellant's own pleading confirms that, rather than demonstrating compliance or equivalence with Clause 5B(a), it argued that Clause 5B(a) was inappropriate, insufficient and incompatible with the operational profile of the Tender. That is not rectification of a tender submission, it is a challenge to the Tender specification.
30. The principle of proportionality does not permit the Board or the Evaluation Committee to disregard a clear, objective and mandatory eligibility condition after the closing date for submissions. Nor does equal treatment allow one bidder to be assessed by reference to an alternative framework which was not the basis upon which all other bidders prepared and submitted their offers – especially when Regulation 262 et seq. caters for this scenario.
31. On the contrary, accepting the Appellant's position would itself breach equal treatment and the principle of self-limitation. The DOC set the criteria in advance, was bound to apply them uniformly, and was subject to any action filed in terms of Regulation 262 et seq. of the SL. A compliant bidder, including the Recommended Bidder, cannot be placed at a disadvantage because another bidder failed to satisfy the published requirements and then sought to replace them with different criteria after the window of possibility.

32. The disqualification did not arise from excessive formalism. It arose from the Appellant's failure to demonstrate compliance, or proven equivalence, with a mandatory suitability requirement which applied equally to all bidders.

#### V. THE RECTIFICATION PROCESS DID NOT ENTITLE THE APPELLANT TO REOPEN OR AMEND THE TENDER REQUIREMENTS

33. The Appellant further contends that the DOC failed to engage with the substance of its Rectification Submission. This grievance is unfounded.

34. The clarification and rectification mechanism exists to clarify information and, where permissible, to rectify incomplete, incorrect or missing documentation within the limits of the Tender and the Public Procurement Regulations. It is not a mechanism by which a bidder may challenge the validity of a selection criterion, amend a mandatory requirement, or ask the Evaluation Committee to reframe the Tender after the submission deadline. **That route is available through Regulation 262 et seq. of the SL.**

35. If the shortcoming identified was the absence of evidence that the Appellant possessed the required Operations Manual and/or LUC, the Appellant had to provide that evidence or otherwise prove compliance with the requirement as published. A technical and legal objection to the requirement itself does not amount to rectification.

36. The DOC submits that the Evaluation Committee assessed the Rectification Submission and concluded that the documentation and explanations provided did not demonstrate compliance with, or equivalence to, Clause 5B(a). In those circumstances, the deficiency identified at submission stage remained outstanding in substance.

37. The Evaluation Committee was not required to accept an attempted challenge to the Tender specifications as if it were evidence of compliance, especially at that stage. Nor was it required, at rectification stage, to enter into a redrafting exercise or to substitute the published suitability requirement with the Appellant's preferred regulatory pathway.

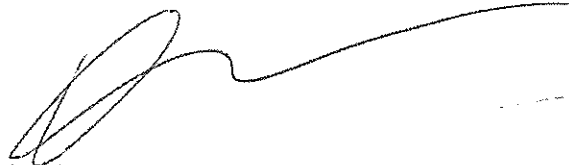
38. This fourth grievance should therefore be rejected.

The objection is principally a belated challenge to the Tender specifications and is inadmissible *in limine*. In any event, it is unfounded on the merits. The Appellant's argument depends on speculative payload assumptions, a misreading of the suitability requirement, a conflation of selection and award criteria, and an attempt to use rectification and post-award documentation mechanisms to cure non-compliance with a mandatory requirement.

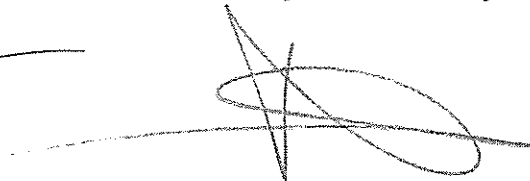
The Recommended Bidder respectfully submits that the evaluation process should not be disturbed. The Recommended Bidder was evaluated as compliant in accordance with the Tender documentation, whereas the Appellant failed to demonstrate compliance, or proven equivalence, with the mandatory suitability criterion.

Accordingly, the Recommended Bidder respectfully requests this Honourable Board to reject in full the Appellant's objection and confirm the decision of the Evaluation Committee.

The Recommended Bidder reserves the right to make further written and oral submissions and to produce further evidence as may be necessary during the proceedings.



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