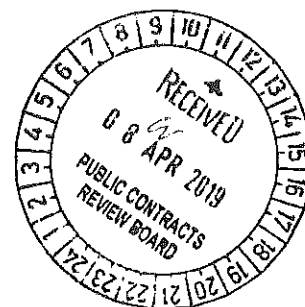


8th April, 2019

The Public Contracts Review Board
Department of Contracts
Notre Dame Ravelin
Floriana.



NOTICE OF OBJECTION

Call: Negotiated Procedure for the procurement of Training Services for 'AB Initio' to form new Fixed Wing Pilots

Complainant: European Pilot Academy (hereinafter, "Complainant")

Contracting Authority: Armed Forces of Malta

Dear Sirs,

Re: Negotiated Procedure for the procurement of Training Services for 'AB Initio' to form new Fixed Wing Pilots

We write on behalf of European Pilot Academy of Security Gate 1, Malta International Airport, Luqa (hereinafter, "Complainants") and refer to the above mentioned negotiated procedure.

In this regard, Complainants respectfully demand a review of this decision and are hereby presenting this Notice of Objection.

The relevant deposit being paid by cheque enclosed with this Notice of Objection.

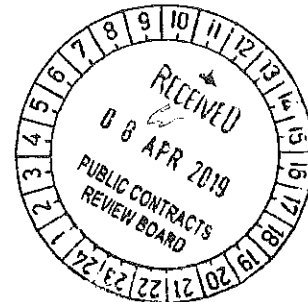
Complainant's reasoned letter of objection is being presented together with this notice.

Regards,


Av. Mark Vassallo
45/18, Strait Street, Valletta

8th April, 2019

The Public Contracts Review Board
Department of Contracts
Notre Dame Ravelin
Floriana.



REASONED LETTER OF OBJECTION

Call: Negotiated Procedure for the procurement of Training Services for 'AB Initio' to form new Fixed Wing Pilots

Complainant: European Pilot Academy (hereinafter, "Complainant")

Contracting Authority: Armed Forces of Malta

RECITALS:

WHEREAS Complainant participated in the above-captioned call;

WHEREAS by means of a Notice of Award dated the 2nd April, 2019, the Contracting Authority recommended that the tender be awarded to Malta School of Flying for the price of €418,490.

WHEREAS the Contracting Authority issued a new Notice of Award dated the 4th April, 2019 whereby the Contracting Authority once again recommended that the tender be awarded to Malta School of Flying for the price of €418,490. The new notice of award included further details regarding the call and also included the right of appeal which was omitted from the 1st notice;

WHEREAS Complainant feels aggrieved by the decision taken by the Contracting Authority and is therefore presenting this appeal;

NOW THEREFORE, Complainant respectfully submits the following:

i) Approval from Director of Contracts

1. The terms of reference (“TOR”) for this Negotiated Procedure were communicated to Appellant on the 10th December, 2019 (copy of terms of reference attached and marked as DOK EPA1);
2. With regards to the TOR, appellant wishes to make the following submissions:
 - a. The TOR indicated the closing date for submissions as the 22nd December, 2019;
 - b. The TOR also indicated the Contracting Authority as the Malta Armed Forces and the Ministerial Procurement Unit as the Ministry for Home Affairs and National Security;
 - c. The TOR did not specify that this was a negotiated procedure nor did it indicate a reference number;
 - d. The TOR also did not specify the award criteria which would be used to evaluate the offers received;
 - e. The TOR did not include a right of appeal;

3. On the 2nd April, 2019, Appellant received an email from the Contracting Authority which informed them that the contract had been awarded to another entity since their offer was the “cheapest and fully compliant offer”. The email in question is being reproduced hereunder:

From: Ebejer Jason at AFM <jason.ebejer@gov.mt>
Sent: 02 April 2019 09:23
To: Matthew Rota <matthew@falconalliance.com>
Cc: Miruzzi Johann at AFM <johann.miruzzi@gov.mt>; Vassallo Ryan at AFM <ryan.a.vassallo@gov.mt>
Subject: Note to Bidders - European Pilot Academy

Dear Mr Rota,

This is to inform you that the contract regarding the AB INITIO Fixed Wing has been awarded to Malta Flying since their offer of €418, 490 was the cheapest and fully compliant offer.

Regards,

Jason Ebejer
Major
Second In Command
Air Wing AFM

4. On the 4th April, 2019, Appellant received another email from the Contracting Authority, which email is being reproduced hereunder:

From: Ebejer Jason at AFM <jason.ebejer@gov.mt>
Sent: 04 April 2019 11:31
To: Matthew Rota <matthew@falconalliance.com>
Cc: Miruzzi Johann at AFM <johann.miruzzi@gov.mt>; Vassallo Ryan at AFM <ryan.a.vassallo@gov.mt>
Subject: RE: Note to Bidders - European Pilot Academy

Dear Mr. Rota,

Reference is made to Negotiated Procedure for the procurement of Training Services for 'AB Initio' to form new Fixed Wing Pilots.

Further to correspondence below hereunder please find the recommendations of the AFM Negotiating Board; in terms of Part IX of the Public Procurement Regulations:

- i) Award Criteria: Cheapest Compliant;
- ii) Name of successful bidder: Malta School of Flying;
- iii) Recommended price of the successful bidder for: €418,490.00;
- iv) Reasons for rejection of your offer: Recommended bidder submitted a cheaper compliant offer;
- v) Deadline for filing appeal: 1200hrs (CEST) of Monday 15th April 2019;
- vi) Deposit to be paid for lodging of an appeal: €2,092.45.

Regards,

J EBEJER
Major
Chairman
AFM Negotiating Board

5. The Public Contracts Regulations¹ define negotiated procedures as:

“those procedures whereby contracting authorities consult the economic operators of their choice and negotiate the terms of a contract with one or more of these”²;

6. The Armed Forces of Malta is listed in Schedule 2 of the Regulations. Therefore Article 24(5) of the Regulations applies. This article specifies that:

“24(5) In all cases in which the authorities listed in Schedule 2 wish to adopt the restricted or negotiated procedure in order to carry out their procurement, the prior consent of the Director shall be required”;

7. It is not clear whether this procedure was complied with and Appellant humbly submits that the Contracting Authority is bound to provide documentary evidence showing that the negotiated procedure was conducted in compliance with Article 24(5) of the Regulations;

8. Should it result that this prior consent is missing, both at the publication stage and at the award stage then the call should be declared null and void.

ii) Right of Appeal

9. Schedule 9 - Annex 1A lists information which must be included in the original call.

10. Article 24 of the Contract Notices section lays down that the call shall include:

24. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

¹ S.L. 174.04

² Article 2

11. This requisite is clearly missing from the terms of reference and Appellant submits that this renders the whole process null and void.

iii) Name and address of body responsible for appeal

12. Moreover the Contract Award Notice does not contain the name and address of the body responsible for Appeal. This is in breach of Clause 13 of the Contract Award Notices in Section Schedule 9 - Annex 1A of the Regulations which lays down that the Award Notice should contain:

13. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

13. Once again this information is missing from the Contract Award Notice leading to it being null and void.

iv) Award Procedure and Criteria

14. The TOR contain no reference to the fact that this procedure was a negotiated procedure. This is in breach of Clause 3 of the Contract Notices Section in Schedule 9 - Annex 1A of the Regulations;

15. More to the point the call did not include a clear indication of the Award Criteria. Article 23 of the Contract Notices Section in Schedule 9 - Annex 1A of the Regulations lays down that the Contract Notice should include:

23. Criteria referred to in regulation 27(3), (4) and (5) to be used for award of the contract: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting shall be mentioned where they do not appear in the specifications or, in the event of a competitive dialogue, in the descriptive document.

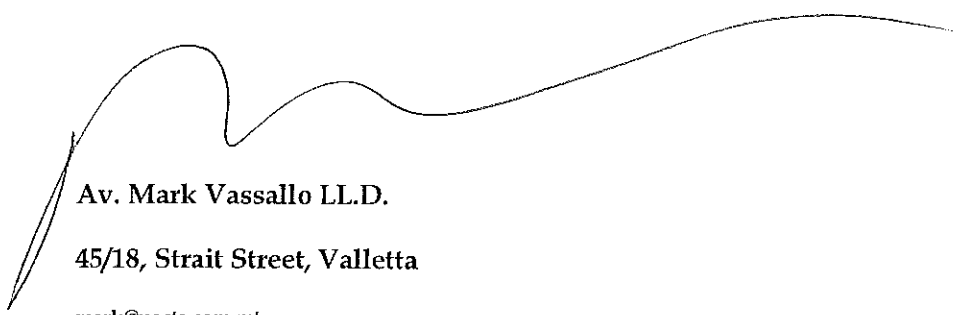
16. Appellants were never informed that the selection criterion was the cheapest compliant bidder as indicated in the Notice of Award.

17. Appellants feel that this grave omission by the Contracting Authority nullifies and voids the whole procedure as it is an omission which goes against the basic rules of transparency governing public procurement.

18. In conclusion, one has to bear in mind that Negotiated Procedures are adopted so that the Contracting Authority is able to negotiate elements of the final agreement including amongst other the price. There was no request for negotiation in price addressed to Appellant and as such this goes to further amplify the lack of transparency which characterizes this procedure.

Thus, in view of the above, Complainant humbly submits that the whole procurement procedure is null and void and thereby requests the Board to revoke the relevant notice of awards and declare the procurement procedure as null and void.

Appellant reserves its right to make further submissions and to produce all the relevant evidence and witnesses during the public hearing.



Av. Mark Vassallo LL.D.

45/18, Strait Street, Valletta

mark@pacta.com.mt

A. TERMS OF REFERENCE

1. Background Information

1.1 - Beneficiary Country

Malta

1.2 – Ministerial Procurement Unit

Ministry for Home Affairs and National Security (MHAS)

1.3 - Contracting Authority

Armed Forces of Malta (AFM)

2. Contract Objectives and Expected Results

2.2 - Specific Objectives

The objectives of this contract are as follows:

Ground School and Flight Instruction for five (5) candidates in order to train them AB Initio up to and including the EASA Commercial Pilot Licence (Aeroplane) with Multi Engine and Instrument Rating and Multi Crew Coordination. The course must be Integrated and phased as follows:

- i. All Ground School
- ii. Basic Flying
- iii. Complex Flying
- iv. Multi-Engine
- v. Instrument Flying
- vi. Multi Crew Coordination Course (MCC)
- vii. Aeronautical Experience: Multi-Engine hour build up module

Phase 7(vii) – Aeronautical Experience: Multi-Engine hour build up module

The standard CPL (A) ME IR flying hours prescribed are to be augmented by phase 7 which is to include a total of 50 hours of flight time in a multiengine aircraft in which the pilot already holds a category/class rating in. A Flight training device/simulator cannot be used for this phase.

The following Licence/Ratings/Courses are required in order to commence phase 7:

- CPL(A)

- ME IR Rating
- MCC course

The phase 7 hour build up must be split as follows:

- 26 hours of cross-country time as PIC or PICUS with full stop landings in unfamiliar airports.
- 14 hours of instrument flight time as PIC or PICUS, in actual or simulated instrument conditions.
- 10 hours of Night time as PIC or PICUS.

A separate hour build up program including the time frame must be submitted for Phase 7 which will be reviewed and approved by the AFM Project leader.

Phase one(i) to six(vi) of the AB Initio CPL (A) ME IR course including the successful acquisition of the following licence/category and ratings: **CPL(A) IR ME and MCC** by each student must be conducted in a maximum of sixteen (16) months from commencement of training. Phase Seven(vii) must commence immediately after the award of the CPL(A) ME IR licence (Phase one to six) and executed within four(4) months of the successful acquisition of the licence and ratings by each pilot.

2.3 - Results to be achieved by the Contractor

Contractor must provide the following documentation/results by the end of the course for each student:

- A Course Certificate for each pilot, certifying that all training has been done up to and including EASA CPL(A) ME IR.
- CPL(A) ME IR licence for each pilot which is issued by local authorities.
- MCC Certificate
- An overall Summary report for each student to include breakdown of hours and marks(if applicable) in all exams undertaken by the pilot.
- Contractor must also provide on a monthly basis a report on each pilot to include subjects covered/hours flown during the month and any additional remarks.
- A report on each pilot after each phase.

3.3 - Project Management

3.3.1 *Responsible Body*

The contract will be managed by a nominated AFM Project Leader.

3.3.2 *Facilities to be provided by the Contractor and/or other parties*

Contractor must provide adequate classroom facilities for the candidates to be able to learn theoretical subjects as well as study facilities.

All facilities, assets required for the training highlighted above must be included in the bid

The class for the theoretical knowledge must be comprised of only AFM Students.

4. Logistics and Timing

4.1 – Location

The Ground training shall be held in Malta whilst the Flight Training is to be programmed to take place in Maltese airspace and in other European Airspace as per consultation between the Contractor and the Contracting Authority.

4.2 - Commencement Date & Period of Execution

The contract validity period is for 3 years from signing of contract. The five (5) pilots will receive both the ground school and flight instruction from Phase one(i) to six(vi), including the successful acquisition of the CPL(A) IR ME Licence/ratings in a maximum period of sixteen (16) months from commencement of training. Phase Seven(vii) must commence immediately after the award of the CPL(A) ME IR licence MCC and executed within four(4) months of its(Phase 7) commencement.

The training commencement date will be in 2019 although exact dates still need to be confirmed.

5. Requirements

5.1 – Personnel

5.1.1 *Key Experts*

Instructors. The instructors that shall carry out the Ground school training shall be qualified EASA Rated Ground Instructors with a valid licence. The Instructors that shall carry out the Flight Instruction must be qualified EASA Flight Instructors with a Valid licence.

Examiners. The Examiners shall be EASA Approved Flight Examiners with a Valid Licence and approved for the issue of the EASA Licence under the auspices of the Maltese Authorities.

5.2 – Facilities to be provided by the Contractor

The Contractor shall ensure that the candidates are supported with any Logistical requirements and Study material. The Contractor must also transfer funds as necessary to support the activities under the contract and to ensure that its employees are paid regularly and in a timely fashion.

If the Contractor is a consortium, the arrangements should allow for the maximum flexibility in project implementation.

The Contractor must ensure that the Flying is uninterrupted and that aircraft availability is maintained throughout in order for a smooth Flight hour build up weather permitting.

Any course material required must be provided by the Contractor.

Contractor must provide all the necessary equipment and take care of all the fees incurred for the conduct of the licence/rating exams required by the local authorities.

In the bid, the Contractor must clearly indicate the rates per pilot for each phase.

5.3 – Equipment

Any equipment that the contractor determines that is essential for the successful outcome of the course must be included in the financial bid and procured by the contractor.

6. Monitoring and Evaluation

6.1 - Definition of Indicators

The Contractor shall provide a report on each pilot at the end of each month and each training phase as highlighted in para 2.3 above, highlighting clearly the proficiency of each pilot and if the required standards were met during the reporting phase. Should a candidate be reported at not reaching the standard, the Contractor shall place recommendations to the Contracting Authority where these will be considered for rectification. A consolidated report on the entire training package must also be submitted at the end of the training.

6.2 - Special Requirements

When conducting Flight Instruction in Maltese Airspace or outside Maltese Airspace, all related costs such as travelling, accommodation, transport, Fuel, airport handling fees, student insurance, instructor insurance and per diem expenses etc must be included in the offer submission.

7. Payments

7.1 - Payment method

The training will be phased into seven (7) distinct phases and payments will be affected after the end of each phase.

7.2 - Candidate Failure

Should a candidate fail to achieve the required standards during the coursework, the Contracting Authority shall be bound to pay up to that particular phase. Should a Candidate or the Contracting Authority opt to withdraw a candidate from the course, the Contracting Authority shall be bound to pay only up to the particular phase.

8. New Candidate

Should the situation highlighted in 7.2 occur ie: a particular candidate withdraws or be withdrawn, the Contractor shall be bound to provide training for a replacement pilot at the same rates agreed upon in this negotiated procedure at the earliest possible, however it is understandable that the new candidate might conduct his/her course with civilian students and course might be conducted in a modular standard as opposed to integrated. The other objectives will remain unchanged.

B. TECHNICAL OFFER

1.1 Bidder's Technical Offer

Terms of Reference	Description of Terms of Reference	CONFIRM/AGREE YES/NO
2.2	Specific Objectives:	
	I shall deliver the objectives stipulated in paragraph 2.2	
2.3	Results to be achieved by the Contractor:	
	I shall deliver the results stipulated in paragraph 2.3	
3.0	Project Management	
	I agree with the facilities provision as per para.3.3.2	
4.0	Logistics and Timings	
	I agree with the provisions for the location of this training as per para.4.1	
	I agree with the provisions for the Commencement and Period of Execution as per para.4.2	
5.0	Requirements	
5.1.1	Key Experts:	
	I confirm that the instructors that shall carry out the training shall be qualified EASA Instructors with a valid license.	
5.2	I agree with the provisions laid out in para.5.2	

5.3	I agree with the provisions laid out in para 5.3	
6.0	Monitoring and Evaluation. I agree with the reporting schedule set out at para.6	
6.2	I agree with the Special requirements laid at para.6.2	
7.0	Payment. I agree with the payment methods at para.7.0	
8.0	New Candidates. I agree with the provisions laid out for new candidates as per para.8.0	

SUBMISSIONS WITH THE TECHNICAL OFFER:

- Filled in Table 1.1 – Bidder's Technical Offer
- Financial Bid per Pilot per Phase
- Hourly rate per instructional hour for phase 7
- Training Programme which must include the course duration for each pilot and a detailed description for the execution of phase 7
- Syllabus and course structure
- Time schedules and milestones from signing of Contract



44-950

63 CONSTITUTION STR MOSTA MST 9058 MALTA

Date _____

Primes Limited, Malta
To HSBC Bank Malta p.l.c.

PAY HIG-IC CONTRACTS REVIEW BOARD or Order

TWO THOUSAND NINETY TWO EUROS AND

€ 2092.45

FOURTY FIVE CENTS ONLY

EUROPEAN PILOT ACADEMY LTD

Marta

Cheque No.

Sort Code

Account No.

⑈004295⑈ 4406131 61154654001⑈

Public Contracts Review Board

Temporary Receipt

Date: 08.04.2019

Received from European Pilot Academy Ltd the sum of € 2,092.45

in respect of Tender Negotiated Procedure for the procurement of Training Services
for 'AB Invis' to form new Fixed wing Pilots

Cheque No: HSBC 4295

Validity of receipt is subject to bank clearance, when payment is made by cheque

Marta

Signature