

PUBLIC CONTRACTS APPEALS BOARD

Case No. 47

CT 2066 / 2005 :Adv. No. CT 49/2005 – AFM File FO 6604/1/05 Tender for the supply of Protective Vests with Associated Ballistic Plates to the Armed Forces of Malta

This call for offers, which was published in the Government Gazette on the 25.02.2005, was issued by the Contracts Department following a formal request received from the Armed Forces of Malta.

The estimated cost of this tender was Lm 45,000 including VAT.

The closing date of this tender was 07.07.2005

In total, fifteen (15) offers were submitted by tenderers on closing date for submission of offers.

Following notification by the Contracts Committee that this tender had been awarded to Messrs. Uniformity Limited for the amount of Lm 34,070.40, Attard Farm Supplies Limited filed a Notice of Objection on 12.08.2005.

The Public Contracts Appeals Board (PCAB) made up of Mr. Alfred Triganza (Chairman), Mr Anthony Pavia (Member), and Mr Edwin Muscat (Member), convened a public hearing on 16.09.2005 to discuss this objection.

Also present for the hearing were:

Attard Farms Supplies Ltd (AFS Ltd)

Mr Joseph Attard
Mr Amos Zurets

Managing Director
International Marketing Manager,
Achidatex Nazareth Elite (1977) Ltd

Armed Forces of Malta

Adjudication Board

Lt Colonel M Schembri
Major P. Vassallo
WO I F. Buhagiar
Sgt J Grech

Chairman
Member
Member
Member

Technical Board

Maj I Ruggier
Sgt Grixti
LBdr Stafrace C
Gnr Borda J
Gnr Borg C

Other

Gnr Johan Miruzzi

Following the Chairman's brief introduction, Mr Joseph Attard, Managing Director, Attard Farm Supplies Limited, (hereinafter referred to as AFS Ltd) was invited to explain the motive behind his Company's objection.

Mr Attard commenced his intervention by stating that the points that formed the basis of their objection were highlighted in their motivated letter of objection dated 17 August 2005. He claimed that the Armed Forces of Malta (AFM) had recommended the award of this contract to Uniformity Ltd whose bid was Lm 8,135 or 31% more expensive than their second best offer under Option 3. In so doing, the AFM had eliminated a total of seven cheaper options available to them.

AFS Ltd's representative proceeded by saying that the supply of samples for this tender was mandatory for the short-listed tenderers and failure to comply with this requirement meant outright disqualification of that particular bidder. He contended that AFM had gone against their own condition in this regard vis-à-vis Uniformity Ltd on the basis that their sample had already been successfully tested in September 2002. This was against normal adjudication procedures where each tender was adjudicated on its own merits at the time of tender without reference to any past tests, supply and performance. He said that the comparison of '*Ballistic and Comfort tests*' were carried out in a non-scientific manner and without documenting site conditions, equipment calibration and control methods in line with relative international standards governing this tender. He questioned how these tests were compared and correlated considering the fact that those of the recommended tenderer were carried out twenty-eight (28) months earlier.

Mr Attard said that AFM had recommended the award of the contract to Uniformity Ltd because its sample was '*slightly superior*' to theirs. He questioned whether this criterion was enough to justify an additional expenditure of Lm 8,135 by AFM. He alleged that the so-called '*slightly superior*' was obtained as a result of comfort and fit criteria which were intrinsically very subjective and which was not valid unless conducted in scientific manner or study over a larger test case involving a number of users. He said that they should have given more weight to ballistic properties, body area covered etc. Mr Attard reiterated that their vests had been approved ballistically and disqualified on comfort and fit.

Colonel Mario Schembri, AFM's Adjudication Board Chairman, explained that they always requested tenderers to submit samples. However, in case of Uniformity Ltd, no sample was requested because in their offer the tenderer stated that the protective vests being offered were the same as that which had already been supplied and tested in the previous tender. He said that this was done because samples were expensive and were non-returnable. This procedure was applied to other bidders as well.

Col. Schembri explained that there were fifteen (15) tenderers who had submitted thirty-seven (37) offers for this tender. He declared that these offers were short-listed on the basis of specifications and price and that tests were carried out only on samples of shortlisted offers and that these were not conducted by the adjudication board but by a technical board within AFM.

On cross-examination by the PCAB, Colonel Schembri said that the first (Shamrock General Trading), third (Pace Associated Ltd) and seventh (AFS Ltd) cheapest offers

were rejected. The first two because they failed completely to comply with Clause 8 of the 'Special Conditions', that is, in submitting ballistic specifications, technical literature and certificates and the last failed to submit adequate literature and supporting warranty certificates of the model being offered. The 2nd, 4th, 5th, 6th, and 8th cheapest offers were tested. The tests were based on the following criteria: - mobility, protection, material and compatibility with current equipment. Apart from ballistic tests, the vests were also tested for resistance to fire. He said that after taking into consideration the tests results, the technical board recommended that *'comparatively, Sample A (LBA International Ltd/ Uniformity) is still slightly superior to Sample D (Archidatex/ AFS) thus making Sample A the best option overall.'* The reasons given were that Sample A offered the best protection, had the best fit, was the most comfortable to wear and was the least heavy.

At this stage, the hearing proceeded with Major I Ruggier, who chaired AFM's technical board, taking the witness stand. On cross-examination by the PCAB, he testified that they were notified to evaluate only four (4) samples of Bullet Proof Vests (Level IV) because another supplier had justifiably stated that his vests were identical to those which had been tested during a similar exercise when the last tender for bullet-proof vests and plates was issued in 2002. The witness said that they adopted the same criteria as that conducted in previous tests because it was still valid. As a matter of fact, emphasised Major Ruggier, these tests considered issues like mobility, protection, material and compatibility with current equipment.

Major Ruggier declared that the ballistic tests were carried out with the same weapon, ammunition and from the same distance. He said that AFS Ltd's sample was one kilogramme heavier than that of Uniformity Ltd. The witness proceeded to explain that a difference of one (1) kilogramme was vital because one had to take into consideration the fact that a soldier had to carry eighteen (18) kilogrammes of equipment and that they were expected to wear vests for a long duration. Also, he said that Uniformity Ltd's sample offered more stability in firing positions and was more compatible with existing AFM equipment.

At this point, Mr Attard clarified that the sample of their ballistic vest was heavier because it offered a larger protective surface area than that of Uniformity Ltd. When he asked Major Ruggier to state whether they had measured the protective surface area of the two vests, the reply given was in the negative.

Major Ruggier proceeded by giving detailed information on the ballistic and ceramic plate test results. The test included shooting at the plates (Level IV) and Vest (Level III A). He said that the ballistic tests showed that Archidatex (the sample submitted by appellant) had one penetration in the collar while the other had one penetration in the shoulder. Apart from remarking that the latter had no Kevlar protection, Major Ruggier also stated that the only change made from the tests carried out in 2002 was that the plate area was divided into four quadrants so that four tests could be conducted on different areas of the plate. This was done because they had only one sample on which tests could be carried out and also because the material would deteriorate with every impact on the plate. The witness explained that this happened because when multiple rounds were fired, shots fell in a cluster in more or less the same part of the plate area.

Major Ruggier said that their recommendation was part of a complete process and that weight, fire positioning and mobility had a bearing on their decision. He claimed that they took into consideration the element of '*comfort and fit*' because the level of protection was comparable and the vests offered the same capabilities according to technical specifications. He pointed out that this factor affected the operation capability of the individual.

During his testimony, Major Ruggier affirmed that the technical board did not enter into the financial merit in view of the fact that they were not aware of the prices. Furthermore, the board did not know the identity of the tenderers as the samples given for testing were only marked *B, C, D* and *E*. Major Ruggier confirmed that the Adjudication Board carried out a cost-benefit analysis.

At this stage the PCAB intervened and asked specific questions to the next witness, Major Pierre Vassallo, particularly on issues relating to '*best value for money*' and the scope of issuing a *tender vis-à-vis a direct order*.

The witness (a) declared that the recommended product was the best value for money because it met the technical specifications at a justified price. He confirmed that the evaluation board would have considered purchasing such vests even if their price was beyond AFM's estimated value; (b) emphasised that if the AFM would have declared 'a priori' any preference to the same Brand / Model already supplied to them, they would not have issued a 'tender' but would have resorted to the issue of a 'direct order'; (c) stated that in this instance, the issue of uniformity and standardisation of equipment did not influence their decision because they relied more on the contents of the technical report.

The Public Contracts Appeals Board,

- having noted that the tender was awarded to Uniformity Ltd at a higher price than the one quoted by appellant;
- having also noted the fact that the supply of samples was mandatory for the short-listed tenderers and that Uniformity Ltd, one of these tenderers, was excluded from fulfilling this obligation this time around as AFM had already tested this Company's samples in 2002 and which resulted in the AFM approving these samples to the extent that it ended up awarding the tender to the same Company;
- having ascertained that all samples submitted by short-listed tenderers, including the one tested in 2002 but which was still relevant for the purpose of this tender, were all evaluated on a level playing field;
- having heard evidence given by Major Ruggier who, in this Board's opinion, gave a highly credible, reasoned, objective and detailed account of the procedures and criteria followed in the technical evaluation of samples submitted by tenderers, which evaluation, following the carrying out of further tests relating to mobility, protection, material, compatibility with equipment as well as ballistic tests and resistance to fire, concluded

that, comparatively, the sample submitted by Uniformity Ltd was slightly superior to that submitted by AFS Limited making such sample the best option overall;

- having taken into account the validity of the consideration given by the technical board relating to the issue of ‘comfort and fit’;
- having noted that the AFM considers that the operational capabilities of the user are directly effected by the ‘comfort and fit’ of the vest;
- having favourably acknowledged the validity of the argument raised by Major Vassallo regarding the issue of ‘best value for money’

reached the conclusion that the decision taken by the Contracts Committee following recommendations made by the Evaluation Committee, was justified and, in consequence, the Board decided to reject the appellants’ objection.

Furthermore, the Public Contracts Appeals Board recommends that the Appellant should not be reimbursed the deposit paid when filing the said objection.

A. Triganza
Chairman

A.Pavia
Member

E. Muscat
Member

10 October 2005