

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 896**

**CT 2031/2015**

**Tender for Supply and Delivery of Fire Appliances to the Civil Protection Department - MHAS.**

The Tender was published on the 27<sup>th</sup> November 2015. The closing date was on the 21<sup>st</sup> January 2016. The estimated value of the Tender is €2,560,000.00 (Exclusive of Vat).

On the 8<sup>th</sup> January 2016 Alberta Fire & Security Equipment Limited filed an objection raising a pre-contractual concern in terms of Regulation 85 of the Public Contracts Procurement Regulations.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday the 28<sup>th</sup> January 2016 to discuss the objection.

Present for the hearing were:

**Alberta Fire & Security Equipment Limited:**

Mr Warren Tabone Valletta  
Mr Adrian Cutajar

Manager  
Commercial Manager

**Civil Protection Department – MHAS:**

Mr Anthony Pisani

Technical Expert

**Department of Contracts:**

Dr Christopher Mizzi  
Ms Susan Camilleri

Legal Representative  
Procurement Manager

The Chairman made a brief introduction and asked the Appellant's representative to make his submissions.

Mr Warren Tabone Valletta on behalf of the Appellant explained that they had to resort to filing a pre-contractual concern because all of their suppliers had insisted on more than the allowed nine months for the delivery period of the fire engines in question.

Dr Christopher Mizzi on behalf of the Department of Contracts said that there were several issues that induced the Contracting Authority to still insist for a nine month delivery period. These nine months were almost certainly to increase because contingencies where objections and standoff periods, are taken into consideration. A longer period would create problems to the Contracting Authority.

Mr Anthony Pisani ID No. 341363M under oath on behalf of the Contracting Authority said that he is an Operations Manager with the Contracting Authority. He explained that the nine month period had been based on the previous experience from when the fire engines were last changed 17 years ago. The engines had been delivered within 9 months. The present vehicles being used are nearly unusable and are costing over €30,000 each in maintenance every year. The Contracting Authority had also made some market research before issuing the Tender and the impression it got from the overseas suppliers of these engines was that the 9 month period was viable. It could be that the Appellant had contacted only one firm that required a longer period of delivery.

Mr Warren Tabone Valletta for the Appellant remarked that the Technical Specifications clearly show that only one supplier could provide the chassis as requested. He also remarked that the wheelbase restriction also restricted choice. Mr Tabone Valletta continued by arguing that they had contacted Iveco for the supply of chassis but was informed that the latter was going to Tender in its own name and would not provide chassis to other bidders.

Dr Christopher Mizzi explained that fire engines are built on special chassis.

Mr Anthony Pisani replying to Dr Christopher Mizzi said that market research had been made. He said that Iveco had a factory that also builds fire engines and not only chassis. The Contracting Authority tried to base the specifications on their local needs but these were within the parameters of several chassis manufacturers. They tried to widen the choice as much as possible.

Mr Warren Tabone Valletta for the Appellant pointed out that for example in clarification number 5 question 10 the chassis wheel base was identified by the bidder as being probably an Iveco. Even though it was amended from 4810mm to 4180mm, this still refers to an Iveco chassis. Clarification 8 question 3 also points out that these requirements were restrictive. Question 15 of the same clarification had asked if equivalent sizes were acceptable since the specified ones were excluding most chassis producers from the Tender.

Another question had been asked on whether ready-made chassis were acceptable. This shows that other bidders also had been having doubts that the Tender was targeted at a specific supplier.

Dr Christopher Mizzi on behalf of the Department of Contracts contended that the reply to question 10 had in fact increased the range of the width of the chassis and the reply to

question 15 about the tyres had stated that “yes” the submission of equivalent sizes was accepted.

Mr Anthony Spiteri continued to give evidence by stating that the reason for the tyre width had been because there had been cases where fire engines had overturned. There had been court cases lost because of these tyres, which were ‘Michelin’ and it was therefore decided to widen the tyre width for this Tender in order to increase road-holding.

Answer 10 had explained that there had been a typing error putting down 4810mm instead of 4180mm and this had been corrected. He also explained that ready-made chassis, manufactured in 2013 could still be used as long as these chassis were new and not used before.

Mr Adrian Cutajar on behalf of the Appellant contended that there was a real problem in that no supplier could deliver the vehicles within 9 months. He also contended that the wheel base length was still discriminatory because it was difficult to supply that length unless one used Iveco; and the latter did not want to supply its chassis to others.

At this point the hearing was closed.

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**This Board,**

**Having noted the Appellant’s “*Pre-Contractual Concern*” in terms of the “*Reasoned Letter of Objection*” dated 8 January 2016 and also through their verbal submissions during the Public Hearing held on 28 January 2016, had objected to the decision taken by the Pertinent Authority, in that:**

- a) The Appellant’s main concern was the restrictive delivery period of 9 months imposed by the Contracting Authority from information received by suppliers of such a nature, this is not possible. In this regard, the Appellant contends that the delivery period should be extended to twelve months so that the principle of “*Fair Competition*”**

is observed;

- b) The Appellant contends through his verbal submissions, that from the Technical Specifications of this Tender, it seems possible that the only “*Chassis Wheel*” dimensions, as dictated in the Tender Document, could only be supplied by one manufacturer, namely Iveco. This imposition creates a limitation of fair competition.

Having considered the Contracting Authority’s “*Letter of Reply*” dated 20 January 2016 and also through their verbal submissions during the Public Hearing held on 28 January 2016, in that:

- a) The Contracting Authority maintains that a “*Market Research*” had been conducted prior to the issue of the Tender and it was found that a delivery period of “*Nine Months*” was tenable;
- b) The Contracting Authority also contended that certain specifications were dictated to suite the local road conditions and this has been drawn from the experience of the last seventeen years.

**Reached the following conclusions:**

- 1. First of all, this Board would like to acknowledge the importance which should be given to this specific Tender, due to the fact that it concerns public safety and protection. In this regard, this Board justifiably felt that this “*concern*” should be treated with the utmost of urgency;**
- 2. With regards to the Appellant’s First Contention, this Board, after having taken into consideration the submissions made by both the Appellant Company and the Contracting Authority, opines that the fact that the latter stipulated a delivery period, did in fact limit the scope of competition, in that, if suppliers cannot deliver the tendered product within the stipulated period, the same are going to be discarded in the first instance.**

**This Board also credibly notes from the submissions made by the Contracting Authority, (under oath), that this particular Tender was issued in order to get newer fire engines as the older ones have lasted 17 years.**

**This Board also credibly notes that the Technical Specifications were drawn up from past experiences, to suit the Local Road Conditions and in order to avoid any possible accidents. However, this Board is applying the “*Principle of Proportionality*”, in that if the delivery period is extended by another three months, the Contracting Authority would benefit from the participation of more bidders.**

**This Board opines that the extension of the delivery period by a meagre three months will not result in a negative effect on the Contracting Authority. This extension is beneficial both to prospective bidders and also to the Contracting Authority. In this regard, this Board upholds the Appellant’s First Contention.**

- 3. With regards to the Appellant’s verbal submission, this Board acknowledges the fact that the Contracting Authority dictated specific Technical Requirements to suite the local conditions.**

**However, this same Board opines that the Technical Specifications of the chassis should be more open to allow the acceptance by the Contracting Authority of “*Equivalent Technical Specifications*”, otherwise a limitation of competition will exist. In this regard, this Board recommends that the Tender Specifications should be dictated**

**to allow as much bidders to participate.**

**In view of the above, this Board recommends that:**

- i) The Contracting Authority should clarify through a “Clarification”, that delivery should allow for a twelve month period;**
  
- ii) The Technical Specifications of the “Wheel Base Length”, should allow for other alternatives, so that other suppliers can make their offer. In this regard this Board recommends that, through a “Clarification”, such an issue can be amended;**
  
- iii) The Tendering Process is to be resumed.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*4 February 2016*