

PUBLIC CONTRACTS REVIEW BOARD

Case No. 903

CT 2031/2015

Tender for Supply and Delivery of Fire Appliances to the Civil Protection Department (MHAS)

The Tender was published on the 27th November 2015. The closing date was on the 18th February 2016. The estimated value of the Tender is €2,560,000.00 (Exclusive of Vat).

On the 8th February 2016 United Equipment Company (UNEC) Limited filed an objection raising pre-contractual concerns 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 25th February 2016 to discuss the objection.

Present for the hearing were:

United Equipment Company (UNEC) Limited:

Mr Gilbert Bonnici	Director
Dr John L Gauci	Legal Representative

Civil Protection Department – MHAS:

Mr Anthony Pisani	Technical Expert
Mr Peter Paul Coleiro	Representative

Department of Contracts:

Ms Susan Camilleri	Procurement Manager
Dr Christopher Mizzi	Legal Representative

The Chairman made a brief introduction wherein he explained that the Board had already decided on another pre-contractual concern regarding this Tender and asked the Appellant's representative if his clients wanted to continue with the objection that had been filed when the decision by the Board had just been published and maybe they were not aware of the contents of the decision.

Dr John Gauci on behalf of the Appellants explained that the clarifications proposed by the Board were in fact published soon after the filing of the objection and these clarifications had ironed out many of the difficulties. However, there were two points that still needed addressing. The Tender was not split into lots and so if a bidder was not able to supply a brush water carrier with exactly the same tailor made specifications as requested, he would not be able to compete in the Tender offering the other lots. He suggested that the Tender should be split into lots and that this would benefit the Contracting Authority itself. He explained that if this suggestion was accepted the case could stop there. However his client would otherwise go into the other details that were considered tailor-made.

Mr Peter Paul Coleiro, ID No. 118078 (M), Senior Operations Manager with the Contracting Authority, under oath explained that it was not true that the specifications for the brush water carrier at present limited supply.

Dr Christopher Mizzi on behalf of the Department of Contracts said that he had already consulted the Contracting Authority on the possibility of splitting the Tender into lots but the Contracting Authority had valid reasons for not doing so. It preferred eventually dealing with one contractor for all the equipment.

Mr Anthony Pisani ID No. 341363 (M) Operations Manager with the Contracting Authority explained under oath that he had written the specifications for this Tender. About the brush water carriers he said that before issuing the Tender they had researched several manufacturers and suppliers and know that the specifications for the carriers can in fact be met by several other manufacturers. The Contracting Authority wanted the water carriers to be equipped with 4 by 4. The wheel bases had been adjusted after the first decision. He showed and explained the wheelbase of several models made by diverse manufacturers and cited for example the wheelbase of Iveco (3200mm – 3915mm); Daf (3000mm – 4050mm) and Scania (2900mm – 4300mm), and filed a list of the wheelbases of vehicles from 7 manufacturers. Replying to a question by Dr John Gauci he said that the specifications for the weight were chosen because in Malta there were no fire hydrants and the fire engines had to carry all the water necessary to fight fires, thus the greater amount of water the better and the inclusion of the range 14 tons to 15 tons. He agreed that the weight at page 13 should read minimum 14 tons instead of a range because a vehicle that carried, for example, 20 tons would be acceptable as long as the capacity was over 5000 litres.

Dr Christopher Mizzi at this point stated that this would have to be explained to all bidders through a clarification.

Mr Anthony Pisani continued by saying that the diagram of the vehicle shown in the Tender Document was just an image to show an example of the vehicle requested. It was not a reference to what the bidders had to submit.

At this point Dr John L Gauci on behalf of the Appellant said that if these clarifications were issued then the latter would have no further objections.

At this point the hearing was closed.

This Board,

Having noted the Appellant’s “*Pre-Contractual Concern*” dated 8 February 2016, where a concern was raised due to the fact that this Tender was split in two (2) lots, hence limiting the scope of competition among prospective bidders.

- a) In this regard, the Appellant Company contends that if the Tender is split into lots and a prospective bidder was not able to supply a particular item in the first lot, the latter would be handicapped in offering his bid for the second lot;**

- b) The Appellant contends that although clarifications were made by the Contracting Authority to eliminate “*Tailor Made*” Technical Specifications based on the decision taken by the Public Contracts Review Board on 4 February 2016, there remained other items which needs specific clarifications, with particular reference to water carriers.**

Having noted the Contracting Authority’s “*Letter of Reply*” dated 15

February 2016 and also through their verbal submissions during the Public Hearing held on 25 February 2016, in that:

- a) The Contracting Authority maintains that for practical and administrative reasons, the latter prefer to deal with one contractor/supplier for the same Tender. At the same time, the Contracting Authority maintains that awarding the different lots to different bidders in the same tendered works would create unnecessary waste of resources;**

- b) The Contracting Authority contends that the Technical Specifications for the “*Brush Water Carrier*” did not limit the supply of the same to any particular bidder.**

Reached the following conclusions:

- 1. Although this Board does not have the jurisdiction to enter into the merit as to whether, when a Tender is split in lots, the Contracting Authority should allow for prospective Tenders to submit offers for any lot, this Board credibly notes that it is more practicable for the Contracting Authority to monitor the execution of the Tendered works/supply by having one bidder executing such works, rather**

than having to deal with more than one successful bidder for the same Tender.

At the same instance, this Board would point out that the Contracting Authority has all the rights and power to dictate what is best in its own interest.

In this regard, this Board opines that by awarding lots to different bidders for the same Tender, this would in fact increase the administrative workload apart from the fact that the time frame for award would be substantially lengthened.

- 2. With regards to the Appellant's Second Concern, this Board notes that during the Technical submissions made by the Contracting Authority, justified and credible reasons were given by the latter with regards to the specifications of the "*Wheel Base*" dimensions.**

This Board also credibly notes the illustrated submissions made during the Public Hearing wherein it was proved that there were various suppliers who could provide the equipment with the dictated specifications namely, Iveco, DAF, Scania P. Series, Man Truck, Volvo, Mercedes Truck and Renault Trucks. In this regard, this

Board opines that the dictated Technical Specifications of the Equipment did not in any way limit the scope of competition.

This Board also notes that prior to the issue of Tender, the Contracting Authority had carried out the necessary market research to acquire the proper equipment for local conditions.

This Board is comforted by the fact that during the Public Hearing it was credibly established and agreed that clarifications should be issued with regards to Technical Specifications of the weight of the “*Wheel Base*”, to eliminate once and for all any misunderstandings or misinterpretations of the Technical Specifications.

In view of the above, this Board strongly recommends that after issuing the necessary clarifications, to avoid undue delay to the procurement, the Tendering Process is to be resumed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

1 March 2016