



Government of the State of Espírito Santo

**INTEGRATED WATER AND LANDSCAPE MANAGEMENT PROGRAM OF THE
STATE OF ESPÍRITO SANTO**

LN-8353-BR

**INTERNATIONAL COMPETITIVE BIDDING ACQUISITION OF VEHICLES AUTO
PUMP TANK AND RESCUE - ABTS. ICB No. 002/2020 SEAMA 1H325 - WATERS
AND LANDSCAPE**

DECISION OF COMPLAINT ABOUT THE NOTICE

**SPECIAL BIDDING COMMITTEE OF THE INTEGRATED WATER AND
LANDSCAPE MANAGEMENT PROGRAM OF THE STATE OF ESPÍRITO SANTO**

Country: Brazil



The World Bank

Date: Victoria, ES, October 29, 2020

DECISION OF COMPLAINT ABOUT THE NOTICE

Project Name	Integrated Water and Landscape Management Project of Espírito Santo
Loan Number	LN-8353-BR
Contract Name	International Public Bidding Acquisition of Vehicles Auto Pump Tank and Rescue - ABTS.
Notice Number	ICB No. 002/2020 SEAMA 1H325
Contractor	State Department of Environment and Water Resources - SEAMA
Executing	State Coordination of Protection and Civil Defense of Espírito Santo - CEPDEC/ES

I - PROCEDURAL REQUIREMENTS

This is a complaint filed by The Company {**OMISSIS**}, CNPJ {**OMISSIS**}, through its legal representative, against the terms of ICB No. 002/2020 SEAMA 1H325.

In item 47.1, Section II – Bid Data Sheet (BDS), they contain "**The procedures for making Complaints Related to Acquisitions are detailed in the Procurement Regulation for Borrowers of Investment Project Financing Operations (Annex III)**".

As for timing, item 3.1, *caput* and its annex III (a) of the "Procurement Regulation for Borrowers of Investment Project Financing Operations" provides for the following:

“Complaints that meet the requirements of paragraphs 2.2 to 2.4 of this Annex are subject to the timelines and procedures set out below. The Borrower shall not proceed with the next stage/phase of the procurement process, including the contract award, until it has properly addressed any such Complaint.

A. Complaints challenging the terms of prequalification/initial selection documents: request for proposals documents, and any other Borrower document requesting Bids, Proposals or Applications should be submitted to the Borrower at least ten (10) Business Days prior to the deadline for submission of Applications/Bids/Proposals, or within five (5) Business Days after the issuing of any amended terms, whichever is later.”

Presented on 26/10/2020, with the opening scheduled for 06/11/2020, the complaint is timely.

Moreover, the challenge complies with the "General Requirements applicable to claims related to acquisitions", annex III, of the Purchasing Regulation for Borrowers of Investment Project Financing Operations.

Once the legal formalities are fulfilled, the administrative complaint is registered, as evidenced by the documents adhering to the Bidding Process.

Thus, the complaint submitted fulfilled the assumptions of legitimacy, reasoning, request for challenge, reconsideration of requirements and timing, as well as interest in the demand. Follow the analysis of the Special Bidding Committee.

II – COMPLAINT SUMMARY

The Complainer, in summary, is based on principles and conditions related to Law 8.666/93, which refers to bidding procedures other than that described in the general notice of this International Public Bidding - ICB No. 002/2020 SEAMA 1H325.

It also expresses the position that international bidding, in Brazil, has as its main characteristic the possibility of expanding the participation of interested parties in hiring, whether national or foreign with regular performance within national borders, according to §§ 1º and 2º of Section I, Chapter I of Law 8666/93. In this case the challenging company states that there is disrespect to the principle of Isonomy, impersonality, linking to the binding instrument and objective judgment when it allows foreign interested parties without any relation to Brazil (domicile, action, among others).

It also reports that technical characteristics are found only in vehicles produced outside the country, even though it is possible to adapt without compromising the operation, but does not present more information or technical data. The complainer company suggests the amendment of item 4.1, which refers to the requirement of "Original factory double cab (factory assembly line), manufactured by the chassis manufacturer and in accordance with ECE Standards R29, ECE R16, ECE R17 and ECE R14, confirmed by a statement by the chassis manufacturer to be presented together with the price proposal".

In the same sense proposes that the term "assembly line" be removed from the above requirement, because it believes that there is currently a company with technical training that meets as well as and allows the participation of VD COMÉRCIO DE VEÍCULOS LTDA in the event.

III – COMMISSION STATEMENT

Initially it should be reported that this International Public Bidding - ICB No. 002/2020 SEAMA 1H325 comes from the Integrated Water and Landscape Management Program of Espírito Santo, which obtains the resources from the IBR loan agreement 8353-BR (P130682), signed between the State of Espírito Santo and the World Bank. Thus, with legal permissive contained in Article 42, § 5º, of Law 8.666/1993, the World Bank Procurement Regulations (version 2011) apply. Thus, there is no need to talk about the application of Law 8.666/93.

Accordingly, as provided for in ICB Notice No. 002/2020 SEAMA 1H325, in Section V – Eligible Countries, "it is appropriate to inform Bidders that, according to IAL 4.8 and IAL 5.1, there are no countries excluded from this bidding process".

It is important to highlight that the complainer took place based on assumption, because in its manifestation the challenging company only "believes that currently there is a company with technical training that meets as well as" and does not present complementary information and/or technical data. The Public Administration cannot rely on deductions without reliable technical data to change security premises in care, either for the citizen as well as for the team that operates in extreme situations that aim to save and preserve lives.

Thus, the challenge was forwarded to the technical team of the Fire Department / State Coordination of Protection and Civil Defense, executing of this International Public Bidding, which thus manifested itself:

"Considering that the entire process in question was prepared with the intention of the Corporation to carry out acquisitions of vehicles that meet the requirements of a safe and effective response, besides always having the concern to ensure a wide participation/dispute, and that this will result in quality of the object and a lower final price on purchase.

Considering that the technical specifications were elaborated with the intention of acquiring a vehicle with strict construction standards, in accordance with international standards and already adopted by other Fire Brigades in the world, as well as that did not restrict the participation of companies.

Considering that the corporation has elected some premises considered essential to be incorporated into the final product, due to the specificity and relevance of its objective, essentially the use in rescue missions and preservation of lives.

In view of the arguments set out, the corporation understands that the item "original factory double cabin (factory assembly line)" is an essential characteristic of the product, due to the lower degree of adaptation required and thus enabling there to be no division and possible conflicts in the responsibilities of preventive and corrective maintenance. Add to the fact that the market has several manufacturers with double cabin in the assembly line and with technical capacity to perform the necessary maintenance.

It must also be considered that an original factory cabin, during its design and approval phase, undergoes several tests, including impact tests, guaranteeing greater safety for its occupants, which fully meets the safety premise already mentioned in this text."

Thus, the possible adaptation of the cabin without compromising the proposed operation is not sufficient to meet the needs of a safe and effective response so that all companies that currently exist with said technical training are able to participate in the event.

IV - THE DECISION

Due to the foregoing, based on the manifestation of the technical area, the Contractor does not accept the challenge and maintains the requirements in ICB Notice No. 002/2020 SEAMA 1H325.

Vitória, ES, 29 October 2020

Special Bidding Committee

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