



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, November 05, 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 11/04/2020, with the opening scheduled for 6/11/2020, **the complaint is untimely**. Despite the timeliness, we respect item 2.6 of the Acquisition Regulation for Borrowers of Investment Projects Financing Operations (Appendix III), which reads as follows:

2.6 Complaints that do not meet the requirements of paragraphs 2.2 to 2.4 of this Annex should be addressed within a reasonable time. If such Complaints relate to contracts subject to prior review by the Bank, they shall be shared by the Borrower with the Bank in order to determine an appropriate course of action.

Completed the legal formalities, the filing of Administrative Objection is registered, as

evidenced by the documents attached to the Bidding Process.

In this way, the objection presented fulfilled the other presuppositions of legitimacy, reasoning, request for dismissal of the objection, reconsideration of the requirements, interest in the demand, which does not happen with the timing.

It is worth emphasizing that the processes financed by Resources from Loans, in the complaint phase, must provide sufficient information in their response to the interested party, without prejudice to confidentiality. In accordance with the **Guidelines for the Procurement of Goods, Works and Technical Services Financed by IBRD Loans and IDA Credits & Donations by World Bank Borrowers (version 2011)**, in Item 2.47:

After the public opening of bids, information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with this process until the publication of the award of contract.

The analysis of the Special Bidding Commission follows.

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 art. 3º, §§ 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, evidences 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 **{OMISSIS}** in the event.

It also suggests the withdrawal of Standard EM 1028, the air bag requirement, of the entire text of the aforementioned Notice

III – COMMISSION STATEMENT

In this opportunity, it is reinforced that this is the case in which Law 8.666/93 is only applied in Art. 42, § 5º:

In order to carry out works, provide services or acquire goods with funds from financing or a loan from an official foreign cooperation agency or multilateral financial body to which Brazil is a party, the conditions resulting from agreements may be admitted in the respective bidding. , protocols, conventions or international treaties approved by the National Congress, as well as the rules and procedures of those entities, including regarding the selection criteria of the most advantageous proposal for the Public Administration, which may include, in addition to the price, other evaluation factors, since which are required by them to obtain financing or a loan, and which also do not conflict with the principle of objective judgment and are the subject of a motivated order from the contract executing agency, which order is ratified by the immediately superior authority.

In this sense, 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 and the Bank's Procurement Regulation (version 2011). Thus, there is no need to talk about the application of Law 8.666/93.

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**". In relation to the questions raised about the deadlines and possible suspensions or modifications of the Public Notice, the rules established in the **Guidelines for the Acquisition of Goods, Works and Technical Services Financed by IBRD Loans and IDA Credits & Donations by World Bank Borrowers** and in the **Procurement Regulation for Borrowers of Investment Projects Financing Operations** must be respected, as described in Notice ICB No. 002/2020 SEAMA 1H325.

In other words, the arguments based on Law 8.666/93 are not applied to this case.

It is important to highlight that the complaint was only based on an assumption, since in its statement the **impugning company does not present evidence**, the 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 complaint was forwarded to the technical team of the Fire Department/State Coordination for Civil Defense and Protection, the executing agency for this International Public Bidd, which expressed itself as follows:

“The requirement for higher levels of robustness and safety is aimed at covering gaps not covered in the vehicles now existing in the corporation. In addition to employment in ordinary situations, the specifications required in the notice aim to meet special, adverse and extreme situations, such as working in difficult-to-reach areas, working in disasters that imply use in flooded areas and different climatic situations. These situations generate greater risk to the vehicles and the garrisons that compose them. Therefore, there is no need to talk about the usual construction conditions for this object.

As for the level of quality and requirements, it is up to the Public Administration to establish, in the public notice, minimum criteria for quality and functioning. It turns out, the specified object is not synonymous with low quality purchase. The terms of reference that originated the notice were prepared by a specialist team from the Military Fire Brigade of Espírito Santo, aiming to meet your needs in ordinary situations and in disaster situations. The specifications, with usual parameters of performance and quality are widely met by the world market, do not prejudice your real needs, not even to isonomy.

Regarding the argument of disrespect to the principle of Isonomy, the very nature of international bidding increases competitiveness and allows the participation of several companies, meeting normative standards that are recognized and accepted worldwide.

As for the cabin's arguments, it must be considered that an original factory cabin, during the design and approval phase of the vehicle, undergoes several tests, ensuring greater safety for its occupants. In view of the requirements and particularities placed on this type of vehicle, there is therefore no need to talk about the structure of cabs usually produced.

In view of the arguments presented, the corporation understands that the item “original double factory cabin (factory assembly line)” is an essential feature of the product, due to the lower degree of necessary adaptation and the prevention of possible division and possible conflicts over the preventive and corrective maintenance responsibilities. Add the fact that the world market has several manufacturers with double cabin on the assembly line and with the 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.

As for the arguments related to the “Air bag” and eventual maintenance difficulties, the public notice requires that the model presented have to be serviced by a dealer or authorized technical assistance with full conditions to carry out the maintenance of the chassis in Espírito Santo, according to item 2.1.1. Section VII - List of Requirements.

As for the arguments about standardization, not only temperature issues are covered, as described by the impugning company. Requirements that deal with the robustness and compliance with the climatic conditions of the state of Espírito Santo are placed in the notice. Compliance with the standard does not exclude the requirement for the vehicle to meet the particular issues of Espírito Santo's climate, as provided for in item 15.1, of Section VII-List of Requirements.”

Regarding the contracting carried out through bidding, the Public Administration must guarantee equality in the participation of the bidders and select the most advantageous proposal, in compliance with the basic principles of isonomy, legality, impersonality, morality, equality, advertising, administrative probity, binding to the summoning instrument, objective judgment. Thus, depending on the asset sought to acquire, the Administration may require characteristics that better protect its needs, in this case the safety and life of the citizens who will be served, as well as of the firefighters who operate this equipment in extreme situations and situations, based on convenience and opportunity, without causing any offense to the principles of competitiveness, equality and economy.

The public administration is responsible for establishing, in the public notice, minimum criteria for quality and functioning. It turns out that the specified object is not synonymous with low quality purchase. The terms of reference that originated the public notice were prepared by a specialist team from the Military Fire Brigade of Espírito Santo, aiming to meet their needs in situations of regular service and in situations of disasters. The specifications, with performance and quality parameters are widely met by the world market, do not prejudice your real needs, not even to isonomy.

The scope is always to reconcile the advantages of hiring and the expansion of competitiveness.

It is known that tenders must be linked to the basic principles of legality, impersonality, morality, equality, publicity, efficiency, administrative probity, binding to the calling instrument and objective judgment, as well as to the related principles of reasonableness, competitiveness and proportionality.

Thus, there can be no prejudice to the interest of Public Administration. What can be seen, in this context, is that the company's complaint has the scope of restricting competitiveness, making the specifications more consistent with specific models of automakers that supply road vehicles, that is, different from what this bid intends to acquire. The technical specifications contained in the notice are already sufficient to meet the needs to which the object of this bid is intended, and it was prepared based on extensive research of items sold on the world market.

In this sense, it is not up to private individuals to enter the margin of discretion that is granted to the Administration to specify the characteristics of the objects bid, which in this case are in accordance with their strict needs to attend to events in extreme situations, which are minutiously analyzed before the elaboration of the Term of Reference.

The Public Administration must define the object of the Bidd according to its needs. It is up to it to define the characteristics of the equipment it needs, not a specific supplier that, certainly seeks to change the object of the notice so that it has more chances in relation to the others, that is, it intends to be the only beneficiary in relation to the others Providers.

Thus, there is no need to talk about restricting competition and altering the Notice, which should be maintained as it is.

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, 05 October 2020

Special Bidding Committee

Robério Lamas da Silva

President of the Special Bidding
Commission

José Felz Ferreira

Member of the Special Committee of
Bidding

André Luiz Souza da Silva

Member of the Special Committee of
Bidding

Victor Leite Wanick Mattos

Member of the Special Committee of
Bidding

Dayan Giuberti Margon

Member of the Special Committee of
Bidding

Robson Monteiro dos Santos

Member of the Special Committee of
Bidding

Jamil Guilherme do Nascimento Júnior

Member of the Special Committee of
Bidding