

PUBLIC CONTRACTS REVIEW BOARD

Case No 2075 HO/T/4128/PC3/2024 (11609)– Provision of services for unstuffing of 20/40 FT containers/trailers, at Enemalta plc stores/sites

17th February 2025

The Board,

Having noted the letter of objection filed by Dr Adrian Delia and Dr Matthew Paris, acting on behalf of Joseph Bonello Logistics Limited (hereinafter referred to as the "Appellant"), filed on the 22nd of November 2024;

Having also noted the letter of reply filed by Dr Christopher Mizzi, acting on behalf of Enemalta plc (hereinafter referred to as the "Contracting Authority"), filed on the 27th of November 2024;

Having heard and evaluated the testimony of the witness Mr Ivan Zammit (Procurement Manager at Enemalta) as summoned by Dr Delia, acting on behalf of Joseph Bonello Logistics Limited;

Having heard and evaluated the testimony of the witness Mr Charles Bonello (Director of Joseph Bonello Logistics Limited) as summoned by Dr Delia, acting on behalf of Joseph Bonello Logistics Limited;

Having taken cognisance of and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 4th of February 2025, hereunder reproduced:

Minutes

Case 2075 – HO/T/4128/PC3/2024 (11609) – Provision of Services for Unstuffing of 20/40FT Containers/Trailers, at Enemalta PLC Stores/Sites

Call for Remedy before Closing Date of a Call for Competition

The estimated value of this tender, excluding VAT, was € 238,770.

On the 22nd November 2024, Joseph Bonello Logistics Ltd filed an appeal against Enemalta plc seeking a remedy under Regulation 262 of the Public Procurement Regulations.

A deposit of € 1193.85 was paid.

On the 4th of February 2025, the Public Contracts Review Board composed of Mr Lawrence Ancilleri as Chairman and Dr Ing. Damien Gatt and Mr Keith Grech as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Joseph Bonello Logistics Ltd

Dr Adrian Delia	Legal Representative
Dr Zackariah Esmail	Legal Representative
Mr Charles Bonello	Representative

Contracting Authority – Enemalta plc

Dr Christopher Mizzi	Legal Representative
Mr Ivan Zammit	Representative
Mr George Mallia	Representative

Mr Lawrence Ancilleri, Acting Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Dr Adrian Delia, Legal Representative for Joseph Bonello Logistics Ltd, stated that the appellant was seeking a remedy on three grievances. The second grievance was on a procedural point, namely on the time necessary to make an offer as laid down in Regulations 91 (1a), 91 (2), and 91 (5) of S.L. 601.05. Since the tender was published on the 14th of November 2024, the necessary twenty days were not allowed. This point in itself is enough for the remedy to be upheld. There are a further two grievances—the estimated value of the tender is set too high, which affects public finances and brings about the risk of an abnormally low price appeal further down the line. The final grievance is that there is extant a current *in vigore* similar tender with a lengthy life.

Dr Christopher Mizzi, Legal Representative for Enemalta Ltd, the Contracting Authority, said that there is a mistake in the published tender document and the correct date, as stated on the ePPS, is the 13th of November, which is exactly twenty days to the 2nd of December. The possibility of an abnormally low price appeal is purely hypothetical and cannot be raised at this stage when bids are not even in. The tender's estimated value is based on research carried out by the Authority, with indications being that it is, if at all, on the low side. The *in vigore* tender requires a similar but not the same service, as it deals with CIF imports, whereas the tender in question just requires unstuffing of containers.

Dr Delia requested that witnesses be heard.

Mr Ivan Zammit (341073M), called to testify by the appellant, stated on oath that he is the Procurement Manager at Enemalta and was responsible for the overall review of the tender. Referred to the tender dossier, he stated that all dates shown in the timetable were correct there except one—the date it was published. The witness agreed that from the 14th of November, the twenty-day end-date would be the 4th of December, and whether one takes the date of publication as the 13th or 14th, a closing date of the 2nd of December does not allow the statutory twenty days. The witness went on to explain the difference between CIF and DDP (Duty Delivered Paid) basis of tenders and that Enemalta issued both types of tenders. DDP has been in use for the last five to six years, with CIF being in use for a longer time. The witness was not involved in the *in vigore* tender, the nature of which is totally different from what was required in the tender in question.

Referred to Section 3 of the present tender, the witness said that the requirements of the other tender were more detailed. As regards the estimated value of the tender, the witness said that he was not involved in this aspect and that it was based on prices charged for work carried out and quotations obtained. He agreed that the work involved in the present tender was less comprehensive than that demanded in the *in vigore* tender.

In reply to questions from Dr Mizzi, the witness confirmed that the tender was published on the ePPS on the 13th of November, that is, one day prior to the date shown on the tender dossier. On the matter of the estimated tender value, the witness tabled a chart showing the calculation of the estimated value (Doc 1) and reiterated that the *in vigore* tender is CIF-based and that DDP offers cannot be applied to it. The witness highlighted Item 12 of the Specification in the *in vigore* tender, which particularly states that that tender “*does not cover goods imported by Enemalta plc that were offered on a ‘Delivered to Store Basis’ by the supplier or his local agent.*” This present tender is restricted to DDP imports and involves only unstuffing.

Questioned further by Dr Delia, the witness said that there is no reason why the estimated value could not be lower.

Mr. Charles Bonello (284771M), called to testify by the appellant, stated on oath that for many years he has been a Director of the appellant company, whose business is haulage, transport, and handling of goods for public and private entities since 1971. Enemalta is one of their principal clients, and their present contract has been running practically uninterrupted since 1994. Enemalta has hinted to the appellant that its prices are too high, but it explained that one-off offers are bound to be cheaper as they are not bound by the many onerous overheads required from a regular contractor. Besides, in its case, labour has to be available on demand, and prices charged are public knowledge. The present *in vigore* tender still has until 2026 to run, with a balance of some €150,000 still available, and can easily cover what is required in the present tender, as it has flexibility in the type of service required.

Questioned by Dr Mizzi, the witness said that the terms of the tender in question are different and that Enemalta generally issues DDP basis tenders. The witness confirmed that the appellant company can offer any service for a contract worth €170,000, whereas the present tender for simply unstuffing is valued at over €200,000.

This concluded the testimonies.

Dr Delia, in his final submission, said that accepting that the Authority admitted an error in the date, whether one takes the 13th or 14th as the valid one, then the closing date of the 2nd of December is still definitely in breach. On this basis alone, the deposit should be refunded. Does it make sense not to correct the estimated value now and risk a claim of abnormally low prices later? This tender is to provide a service that is already being provided by the *in vigore* tender, and no reason has been given why this new tender is needed. This tender should be cancelled or at least delayed until the *in vigore* one expires.

Dr Mizzi said that as the date of publication is the 13th of November, that makes the closing date correct. The estimated value is based on quotations received by the Authority. There are two different types of contracts, and the CIF basis one precludes handling of DDP basis imports. A claim for abnormally high estimated value is unheard of, as the appellant is not in a position to know what estimates or quotations the Authority has received—in any case, this is different work with different quantities involved. Comparison is impossible, and competition is the spirit of tenders.

In a final comment, Dr Delia said that the arguments of the Contracting Authority are contrary to the testimonies heard.

The Chairman thanked the parties and declared the hearing closed.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 4th of February 2025.

Having noted the request for remedy filed by Joseph Bonello Logistics Limited (hereinafter referred to as the "Appellant") on the 22nd of November 2024 and refers to the claims made by the same Appellant with regard to the tender of reference HO/T/4128/PC3/2024 (11609) listed as case No. 2075 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Adrian Delia and Dr Zackariah Esmail

Appearing for the Contracting Authority: Dr Christopher Mizzi

Whereby, the Appellant contends with respect to:

a) ***Estimated Value of the Tender is Too High***

It is the submission of the appellant company the estimated procurement value (of €238,770.00 excluding VAT) is high and not reflective of the market prices, and thereby the amount as indicated is erroneous.

Whilst indeed provision 1.3 of the tender document states that the estimated procurement value is not restrictive and final, an unrealistic high amount will have damaging effect on eventual financial offers, and this due to the repercussions caused by claims of abnormally low pricing.

The failure by the appellant company to seek to correct the error, manifested within the tender document, would imply that the appellant company is accepting the contents of the tender document and as a consequence the price indicated as the estimated procurement value.

As a matter of fact, an identical tender [HO/T/4115/PC3/2023] issued in 2023 [with technical specifications which are less onerous than the tender under review], yielded the following financial offers:

Estimated procurement value	€187,837.50
Joseph Bonello Logistics Limited	€173,175.00
White Brothers Limited	€173,575.00
Joseph Bonello	€186,000.00

Thereby and in view of the above, the appellant company is seeking the assistance of the Public Contracts Review Board, to correct the error in the estimated procurement value and this in accordance with reg. 262 [1][d] of S.L. 601.03;

b) ***Duration of the Time Limit for the Receipt of Tenders is Too Short***

The duration of the time-limit for the receipt of the tender under review is in breach of inter alia reg. 91 of S.L. 601.05.

The chronology order of the dates is as follows:

Date of publication of the tender	14/11/2024
Deadline for submission of pre-contractual remedies	26/11/2024 [11.9 days]
Deadline for submission of tenders	02/12/2024 [18 days]

The period of publication of the tender under review is less than the minimum amount set out in reg. 91 of S.L. 601.05, and thereby is in breach of the Public Regulations applicable.

The period is manifestly in breach of the regulations, since there is no periodic indicative notice, nor an accelerated procedure, and thereby this matter requires the intervention of this Honourable Board to correct the error in accordance with reg. 262 [1][a] and [b] and [d]

c) ***This Procurement is Not Required Since HO/T/4115/PC3/2023 is Still in vigore***

In any case and without prejudice to the aforesaid, an identical procurement HO/T/4115/PC3/2023 is currently *in vigore* and thereby the procurement under review is not necessary.

It is the submission of the appellant company that through this procurement, the contracting authority is seeking to circumvent its obligations vis-à-vis procurement HO/T/4115/PC3/2023.

The Board also noted Contracting Authority's Reasoned Letter of Reply filed on 27th of November 2024 and its verbal submission during the hearing held on 4th February 2025, in that:

a) ***Estimated value of the tender is too high***

The defendant rejects this allegation as unfounded, since the estimated value published by Enemalta was derived from actual quotes which Enemalta obtains for the procurement of similar services as being requested in this tender.

The objector should be required to substantiate and provide sufficient proof to prove his allegation that such an estimate is not reflective of the market prices and erroneous.

There is sufficient data and information to back its estimate value for this tender based on the current market conditions.

Contrary to what is being stated by the objector, the tender mentioned by the appellant, namely, HO/T/1415/PC3/2023 (6739) Customs Clearance, Loading from Quay/Airport and Delivery to Stores of Imported Articles – has a different subject and terms of reference and thus the quoted tender cannot be compared to the current one. Since the services are different and therefore any comparison exercise of the estimated value between the two tenders and any prove in this regard is futile and should be dismissed as irrelevant.

The possible abnormally low pricing of his tender claim cannot be entertained during a remedy before closing date, since bidders have not yet submitted their price and any point of contention on this merit could be raised *a tempo e luogo* should a future evaluation committee deem anything of the sort with respect to the pricing. At this juncture all allegations of the sort are purely fictitious and artificial which this Board cannot consider.

b) ***Duration of the time limit for the receipt of tenders is too short***

The duration for this tender is in line with relevant public procurement regulations for entities.

The publication date is the 13th November 2024 and not the 14th November 2024 as indicated by the objector and as erroneously indicated in the summary sheet of the tender. The actual date on the official electronic platform when this tender was published, by referring to a screenshot of the actual publication date as outlined in the ePPS for this tender under the “*View CfT Workspace*”

as per the link being provided:

(<https://www.etenders.gov.mt/epps/cft/prepareViewCfTWS.do?resourceId=11638437>)

MULTIPLE TENDERS WILL BE ACCEPTED:	Yes
DATE OF PUBLICATION/INVITATION:	13/11/2024 07:44

Therefore, by contrast to what is being said under point 2.2 of the remedy document, it is pointed out that from the 13th November 2024 up to and including the 2nd December there is a 20 day time-limit for the submission of tenders.

This is in line with Regulation 91(5). of S.L 601.05; for which this tender is applicable since the value for this tender is less than the threshold established under Regulation 30(1)(a) [i.e.: less than €443,000]. Regulation 91(5) states that “...*the minimum time limit for the receipt of tenders shall be twenty days from the date on which the tender has been published.*”

c) ***That this procurement is not required since another contract is still being utilized***

Reference is made to HO/T/1415/PC3/2023 (6739). A quick look at the title of this tender and section 1.1 of the Instruction to Tenderers will immediately show that the quoted tender is actually for a different scope than that for the tender under discussion. The quoted tender is for ‘*The provision of services for customs clearance, loading from quay/ airport and delivery to stores of imported articles including the following services: Customs Clearance, Transportation of Containers and Loading/Unloading of Containers.*’

Regarding HO/T/1415/PC3/2023 (6739), reference is made to:

- Item 12 under the Technical Schedule that states “...*does not cover goods imported by Enemalta plc that were offered on a ‘Delivery to Store Basis’ by the supplier or his local agent.*” This means that this quoted tender is applicable and usable when good are imported by Enemalta on a CIF basis as the standard international shipping agreement.
- Financial offer contained therein under Items 4 to 6 it is specifically being stated that these are related to “(B) *Transportation of Containers from Quay to Enemalta Stores. Rates are to include the return of the containers back to quay or storage area of the shipping agent (rates to unload the cargo will be the same as in (A) above*”
Item 4 - Per 20 feet container
Item 5 - Per 40 feet container
Item 6 - Side Loader (to unload and reload containers on trailer once empty)

Therefore, while the quoted tender (HO/T/1415/PC3/2023 (6739)) was meant to transport the container from Quay/Airport to Enemalta site, the new tender, under review, is solely specifically to empty the containers (unstuffing). The new tender is meant for a different international shipping agreement, where Enemalta plc. Imports goods a DDP (Duty Delivery Paid) basis. In this case customs clearance and transportation are handled by the seller and therefore Enemalta plc. in these circumstances would not require the services of the quoted tender. Hence the reason why the tender under review is for only the unstuffing, whereas the quoted tender was not applicable for imports DDP ["Delivery to Store"] as implied earlier.

The difference between the two tenders is marked and therefore one cannot say that these are identical procurements as indicated by the objector. The two tenders relate to different kinds of shipping arrangements which Enemalta plc. contracts with sellers for its imported goods.

Therefore, the quoted tender can never be legally deemed as being of any hinderance for Enemalta plc. to issue another tender to be able to cater for the different requirements for its operations. Different services are being procured for different requirements.

It is the intention that Enemalta will continue to utilize the services being rendered under the quoted tender irrespective of this new tender process which as already mentioned relate to a different service.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances.

Grievance 1: Estimated value of the tender is too high

- The Appellant contends that the published estimated value of EUR 238,770.00 (excl. VAT) is unrealistically high and not reflective of market prices, possibly having *“damaging effect on eventual financial offers, and this due to the repercussions caused by claims of abnormally low pricing.”*
- The Contracting Authority counters that the estimated value is based on actual quotations and market data for the specific services required in tender under review, HO/T/4128/PC3/2024 (11609).
- The Board observes that the Appellant relies on tender HO/T/1415/PC3/2023 (which is CIF-based) as a benchmark to estimate the tender value.
- The Board understands that the two tenders differ substantially in subject and contractual scope (for example CIF vs DDP shipping arrangements, as described below), meaning a direct comparison between the two tenders is not straightforward.

- The Board, at this stage, has no evidence to suggest that the Contracting Authority's estimate was not derived diligently or that it fails to reflect market realities for the actual services required.
- The Board agrees that any subsequent claims of abnormally low offers during evaluation can be handled under the relevant procedures at that stage, rather than in a remedy before closing date.

Therefore, the Board does not uphold the Appellant's grievance on this point.

Grievance 2: Duration of the time limit for the receipt of tenders is too short

- The Appellant argues that the period from publication (14th November 2024 as per tender dossier Summary Sheet) to the deadline for submission of tenders (2nd December 2024 as per tender dossier Timetable) is less than the mandatory twenty (20) days stipulated in Regulation 91(5) of S.L. 601.05.
- The Contracting Authority maintains that the tender was actually published on 13th November 2024 (as reflected on the e-PPS system), thus making 2nd December 2024 the 20th day from the date of publication and in line with Regulation 91(5).
- Regulation 91(5) S.L. 601.05 provides that "*the minimum time limit for the receipt of tenders shall be twenty (20) days from the date on which the tender has been published.*".
- The Board concurs with the contracting Authority that the official publication date when the tender is made available to all potential bidders on the e-PPS system should govern this calculation.
- With publication on 13th November 2024, the Board concludes that the minimum time limit requirement of twenty (20) days as stipulated by Regulation 91(5) S.L. 601.05 was not met.

Therefore, the Board does uphold the Appellant's grievance on this point.

Grievance 3: This procurement is not required since HO/T/4115/PC3/2023 is still *in vigore*.

- The Appellant claims that identical procurement (HO/T/1415/PC3/2023) “*is currently in vigore and thereby the procurement under review is not necessary*”.
- The Board finds that the two procurements pertain to distinct international shipping arrangements. Specifically, the tender under review (HO/T/4128/PC3/2024 (11609)) is for DDP imports—where the seller is responsible for customs clearance and delivery—thus requiring only unstuffing services at Enemalta’s stores/sites. By contrast, the quoted tender (HO/T/1415/PC3/2023) applies to goods imported on a CIF basis.
- More specifically, Item 12 of Section 3 – Specifications/Terms of Reference of HO/T/1415/PC3/2023 states that “*This contract does not cover goods imported by Enemalta plc that were offered on a ‘Delivery to Store Basis’ by the supplier or his local agent.*” Accordingly, the quoted tender (HO/T/1415/PC3/2023) is applicable only to CIF-based imports and cannot be applied to DDP imports. The tender under review (HO/T/4128/PC3/2024 (11609)) is meant for DDP imports.
- In view of the above, the Board concurs with the Contracting Authority that “*the difference between the two tenders is marked and therefore one cannot say that these are identical procurements as indicated by the objector.*”

Therefore, the Board does not uphold the Appellant’s grievance on this point.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold the Appellant’s contentions with respect to the following grievances:
 - The estimated value of the tender is too high.
 - This procurement is not required since HO/T/4115/PC3/2023 is still *in vigore*.
- b) Upholds the Appellant’s contentions with respect to the following grievance:
 - The duration of the time limit for the receipt of tenders is too short.
- c) To amend the ‘Closing Date of the Call for Tenders’ to the 20th March 2025.
- d) Directs that the deposit paid by Appellant to be reimbursed.

Mr Lawrence Ancilleri
Chairman

Dr Ing. Damien Gatt
Member

Mr Keith Victor Grech
Member