

13 FEB 2022

Office of the Municipal Manager
Kantoor van die Munisipale Bestuurder

MEMORANDUM

LEGAL DEPARTMENT

CHECK BEFORE SUBMISSION	YES	NO
REGISTERED ON CSD DATABASE		
LETTER - SOLE SUPPLIER if applicable.		
CSD		
MUNICIPAL ACCOUNTS		
MBD 8,9 & 10		
QUOTE/INVOICE ATTACHED		
BUDGET (SAMRAS)		
CASHFLOW		
SIGNATURES		

To Aan: MUNICIPAL MANAGER
 From Van: MERVIN WILLIAMS
 Job Title: CHIEF LEGAL ADVISOR
 Date Datum: 28 JANUARY 2022

Re Insake: **DEVIATION: TO OPPOSE THE APPLICATION FOR A RULE NISI TO BE ISSUED FOR INTERDICTING THE MUNICIPALITY TO ACT UPON ITS DECISION TO WITHDRAW THE AWARD OF TENDER B/SM73/21 TO SECURITEM PENDING THE FINALISATION OF AN APPEAL BY SECURITEM TO THE MUNICIPALITY IN TERMS OF SECTION 62 OF THE SYSTEMS ACT AGAINST THE DECISION OF THE BAC MADE AT A MEETING OF 28 JANUARY 2022 TO WITHDRAW THE AWARD OF THE TENDER TO SECURITEM AND THE FINALISATION OF PROCEEDINGS TO BE BROUGHT BY SECURITEM TO REVIEW THE BAC'S DECISION IN THE EVENT THAT THE MUNICIPALITY DETERMINES THAT NO APPEAL LIES TO THE MUNICIPAL MANAGER AND THE FINALISATION OF PROCEEDINGS TO REVIEW ANY DECISION OF THE MUNICIPAL MANAGER DISMISSING THE APPEAL**

1. PURPOSE

To obtain approval in terms of Supply Chain Management Policy, to deviate from the official procurement process, in an exceptional case where it is impractical or impossible to follow the official procurement processes (section 36.1(a)(v))

REASON FOR DEVIATION: (Mark with x where applicable)	
36.1(a)(i) Emergency.	
36.1(a)(ii) Goods or services are produced or available from a single provider.	
36.1(a)(iii) Acquisition of special works of art or historical objects where specifications are difficult to compile.	
36.1(a)(iv) Acquisition of animals for zoos and /or nature and game reserves.	
36.1(a)(v) Exceptional case and it is impractical or impossible to follow the official procurement processes.	X

2. SUBSTANTIATE WHY SCM PROCESS COULD NOT BE FOLLOWED (TO BE REPORT TO COUNCIL)

Securitem served a Notice of Motion on the Municipality via on or about 28 January 2022 via email in which they intend applying for an interdict to restraining the Municipality in any way to act upon the Municipality's decision to withdraw the award of tender B/SM73/21 to Securitem and to award the tender to a qualifying tenderer unconditionally.

The application was not issued by the High Court or served by the sheriff on the Municipality. The application is set to be heard on Monday, 31 January 2022 at 14h00. The Municipality had to serve and file its notice of opposition on or before 17h00 on Friday, 28 January 2022 and serve its answering affidavit by no later than 10h00 on Monday, 31 January 2022. Securitem will file its replying affidavit by 13h00 on Monday, 31 January 2022.

STBB Attorneys represented the Municipality in the dispute of Metro City Protection Services and acted on the Municipality's behalf in a monetary claim instituted by Securitem that VAT should not be included in the shift prices. This application currently under discussion is based on exactly the same principles as the Metro City matter. STBB Attorneys successfully defended the interdict application instituted by Metro City Protection Services and pursuant thereto settled the Review application in the Municipality's favour. STBB Attorneys has the relevant background, institutional experience and expertise to attend to this matter and given the Metro City matter has the background of how the municipality's procurement process works.

3. BACKGROUND

On or about 10 April 2021 the Municipality published a tender notice for the provision and rendering of security services for the greater WCO24 ending 30 June 2024 under B/SM73/21. The Municipality appointed Securitem for the provision of security services in Area A to E Monday to Saturday and Sunday, day and night shift security services, the Ad-hoc security services and additional equipment for the areas. Two additional service providers (ranked 2 and 3) were appointed for areas A to E, who will be used if the recommended bidder is unable to perform in terms of the contract. The award was made subject to a 14 day objection period as per SCM Regulation 49 as well as a 21 day appeal period as per Section 62 of the Municipal Systems Act. No rights therefor accrued to Securitem prior to the completion of the time periods.

Loyla Cupido submitted an appeal on behalf of FB Protection Services (Pty) Ltd ("FB"). The appeal was against the decision of the Accounting Officer as recommended by the Bid Adjudication Committee ("BAC") to award the tender to the winning bidders on B/SM73/21. FB Protection Services alleged that the Bid Evaluation Committee ("BEC") failed to evaluate the tender as per the correct pre-qualification criteria. FB Protection Services further alleged that the preferred bidders ranked 1-Securitem, ranked 2- Six Combined and ranked 3-Watch Eagle "pricing for public holidays day/night did not comply with PSIRA rate, and therefore be regarded as non-compliant and eliminated for further evaluation."

The Appeal Authority found that there were three qualifying criteria, and one of those was compulsory, and that the insurance aspect was not under the compulsory criteria hence not mandatory, but just recommended. The Appeal Authority set aside the Accounting

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officer's reward and referred the matter back to the BEC for re-evaluation which will include a compliance assessment with the PSIRA rates and to include bidders that were declared non-responsive due to public liability insurance.

4. DISCUSSION

The appeal decision the BEC re-evaluated the bidders which were found non-responsive due to public liability insurance. Securitem's tax status was found to be non-compliant through CSD at the time the re-evaluated tender served before the BAC and they were requested to proof from SARS of their tax compliance status within 7 days or proof from SARS that they have made an arrangement to meet their outstanding tax obligations. The BEC recommended to the BAC that Mafoko Security Patrols (Pty) Ltd be appointed for areas A to E for the rendering of security services from Monday to Saturday and Sunday, day and night shift security services. Securitem was regarded as non-compliant due to their tax status not showing in order on CSD.

Securitem now wants to apply for an order declaring that a rule nisi be issued, returnable on a date to be determined by the Court, calling on the Respondents to show cause why an order should not be granted in the following terms:

1. Directing that the Municipality is interdicted and restrained in any way further acting upon the Municipality's decision to withdraw the award of tender B/SM73/21 to Securitem, pending:
 - 1.1 the finalisation of an appeal to be made by Securitem to the Municipal Manager pursuant to section 62 of the Systems Act against the decision/s of the BAC made at the meeting of 28 January 2022 to withdraw the award of the tender to Securitem;
 - 1.2 the finalisation of proceedings to be brought by Securitem to review the BAC's decision/s (in the event that the Municipality determines that no appeal lies to the Municipal Manager) and/or
 - 1.3 the finalisation of proceedings to review any decisions of the Municipal Manager dismissing the appeal envisaged in paragraph 1.2 above.
2. Interdicting the Municipality from appointing any other service provider to offer guarding services required by the Municipality, pending the finalisation of the appeal and/or proceedings envisaged in paragraph 1.1 to 1.3.
3. Interdicting the Municipality from concluding agreements with any other bidder, alternatively implementing any agreements already concluded.
4. Directing that the costs of the application be paid by the Municipality.
5. Directing that pending the final return date of the rule nisi:
 - 5.1 the Municipality must retain Securitem as the only authorised service provider permitted to offer guarding services required by the Municipality;
 - 5.2 the Municipality is interdicted from appointing any other service provider to offer guarding services required; and
 - 5.3 The Municipality must take all steps necessary to extend the existing contract, without interruption.

Securitem was well aware that the initial award made to them was made conditional pending the receipt and consideration of any objection and/or appeal within the 14 and 21 day period. One appeal was received and the initial award to Securitem was set aside by

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the Appeal Authority and referred back to the BEC and BAC for reconsideration. No rights have vested for Securitem and no award was withdrawn by the Municipality.

5. In light of the aforesaid, the Municipality wants to oppose the interdict application. It will severely impact on the municipality given that we will be without a service provider. Securitem, the current service provider indicated that they will be withdrawing their services from the municipality from 31 January 2022 if they are not the successful bidder in the tender process.
6. STBB Attorneys is not one of the attorney firms on our panel, but given their previous involvement with the applicant and the Metro City Matter they are regarded as the best placed firm to represent the Municipality's interests in the case.

7. FINANCIAL IMPLICATIONS

STBB Attorneys indicated that they will attend to the matter for an amount of approximately R 75 000.00 exclusive of VAT. This also includes the cost of an advocate to be appointed to attend to the matter. The amount indicated here is market related. It may also vary given the nature of the application.

8. RECOMMENDATION

It is recommended that:

1. STBB Attorneys be appointed to oppose the application for inter alia interdictory relief instituted by Securitem against the Municipality.
2. That provision be made for the appointment of an advocate, which costs is included in the abovementioned quoted amount;
3. That the deviation be reported to Council in terms of the Supply Chain Regulations and Council Policy;
4. That the total costs be reported to Council after the matter has been completed.



MERVIN WILLIAMS
CHIEF LEGAL ADVISOR

Date: 28 January 2022

**RECOMMENDATION SUPPORTED / NOT SUPPORTED BY THE STELLENBOSCH
MUNICIPAL BID ADJUDICATION COMMITTEE**

Name	Signature	Date

Comments:

Emergency

CHAIRPERSON..

DATE

28/01/2022

**RECOMMENDATION FROM BID ADJUDICATION COMMITTEE APPROVED BY THE
ACCOUNTING OFFICER**

Name	Signature	Date
Gerablis Mettler		28/01/2022

STELLENBOSCH MUNICIPALITY

ATTENTION: Annalene De Beer

PER EMAIL

Your Ref:

Our Ref: //WG

Date: 28 January 2022

Dear Madam,

STELLENBOSCH MUNICIPALITY / SECURITEM (PTY) LTD

Please note that it will cost approximately R75,000.00 excl VAT to run this matter.

Could you kindly provide me with the Municipality's VAT number?

We await your response per return.

Yours faithfully
STBB

W GRAHAM

The Big Small Firm

stbb.co.za

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Blouberg: 021 521 4000
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Tyger Valley: 021 943 3800

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DIRECTORS: Jonathan Steytler (Managing) | Stoffel Ackermann | Ghislaine Barends | Martin Bey | Jacques Blignaut | Steven Borwick | Maryna Botha | Darren Brander | Michael Bromley | Luthfeya Cassim | Annetjie Coetsee | Tiaan Esterhuysen | Refqah Fataar Ho-Yee | Hanlie Ferreira | Niel Grundlingh | Van Wyk Jooste | Belinda Lewis | Robert Matlhare | Hennie Mouton | Nikhail Munsamy | Martine Newman | James Phillipson | Martin Sheard | Nicole Stevens | Philip Steyn | Lauren Sullivan | Marliize Swart | David Thompson | Andreas Tsangarakis | Annemarie van Vuuren | Shereen Volks | Allan White
SENIOR ASSOCIATES: L Biccari | L Daniels | C Dippenaar | D Du Plessis | H Dyssel | D Els | J Foxcroft | W Graham | S Grobler | J Hamers | M Hennig | S Hougaard | L Mace | N Mentoor | B Mostert | C Mostert | H Nauschutz | C Robberts | L Solomon | C Symington | A Wiese
ASSOCIATES: A Abrahams | S Adams | C Avenant | R Botes | K Buys | T Chananie | N Erwee | S Fish | C Gees | K Govindasamy | E Grobbelaar | N Harvey | O Harvey | J Hickman | T Jaffar | K Leach | D Lebotschy | M Louw | Z Madianga | L Majalumni | T Mally | C Moonsamy | E Moore | T Mrubata | M Naidoo | O Ndungane | Z Nonkasana | I Salie | R Siebers | L Steenkamp | C van Vuuren | C Williams-Short

EXECUTIVE CONSULTANTS: Peter Arnot | Tim Chase | Gerhard Kotze | Lizelle Kilbourn | Andy McPherson | Christoff Pauw | June Theron | Richard Volks
FINANCIAL MANAGER: Pierre Fourie

Smith Tabata Buchanan Boyes Inc

REGISTRATION NO: 1992/003316/21

VAT REG NO: 4670133877

