

DisM 10/22



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 : MUNICIPAL MANAGER
From : MERVIN WILLIAMS
Job Title: CHIEF LEGAL ADVISOR
Date : 7 APRIL 2022
Re : DEVIATION: TO APPOINT AN ATTORNEY'S FIRM TO OPPOSE, ON BEHALF OF THE MUNICIPALITY, THE REVIEW APPLICATION INSTITUTED BY SECURITEM (PTY) LTD ("SECURITEM") AGAINST STELLENBOSCH MUNICIPALITY AND OTHERS. THE REVIEW IS IN RELATION TO THE DECISION OF THE BID ADJUDICATION COMMITTEE TAKEN ON OR ABOUT 28 JANUARY 2022 TO REGARD THEIR TENDER AS NON-RESPONSIVE AND TO EXCLUDE SECURITEM'S BID

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 on or about 10 March 2022 to review the decision taken by the Bid Adjudication Committee ("BAC") to exclude Securitem's bid in Tender B/SM73/21 to declare Securitem non-responsive. Securitem

applies for an order that its tender be re-evaluated by the BAC and found responsive/tax compliant and that Securitem be placed on the list of approved security service providers and be awarded at least Area A. This is in contrast to the resolution taken by the BAC that Securitem was not tax compliant and therefor non-responsive.

The Municipality has 5 days to oppose the application instituted by Securitem and 15 court days to provide the Rule 53 record to the Registrar of the High Court and file its opposing papers within 30 days after Securitem has filed its supplementary affidavit or Notice to Stand by its original papers to file its opposing papers in the matter.

Although the Municipality has a legal panel in place, STBB Attorneys who represented the Municipality in three other Supply Chain matters involving Securitem (the dispute of Metro City Protection Services when the tender was awarded to Securitem previously; a claim in regard to VAT on the tender awarded to them; the interdict application instituted by Securitem when the tender was not awarded to them in the last round. The latter matter was withdrawn by their legal team after we opposed the interdict. STBB therefore has extensive knowledge an background about the tenders involving the security services and the Securitem matters. It is impractical to now appoint one of the panel members to deal with this review as STBB already have all the background and have successfully dealt with the previous three matters. The last two matters their appointment was done through a deviation as they are not currently on the legal panel. Securitem has now instituted review proceedings in the Interdict that was withdrawn by Securitem and for which STBB was appointed in January.

STBB Attorneys has the relevant background, institutional experience and expertise to attend to this matter and in terms of the current legal tender, the Municipality reserved the right to make appointments outside the legal panel, to ensure that the best interest of the Municipality is served especially where a firm was previously involved in a similar or the same matter.

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.

Pursuant to same, 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 alleged that the Bid Evaluation Committee ("BEC") failed to evaluate the tender as per the correct pre-qualification criteria. FB 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 should 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, the insurance was not under the compulsory criteria hence not mandatory, but just recommended. The Appeal Authority 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

1. Pursuant to 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 non-compliant through CSD and was requested to submit within 7 days proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their outstanding tax obligations. Securitem fail to comply with same. 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. The Municipality subsequently awarded the tender which forms the subject of the review application to Mafoko Security Patrols (Pty) Ltd ("Mafoko").
2. Securitem instituted legal proceedings against the Municipality interdicting and restraining the Municipality in any way further to act upon the Municipality's decision to withdraw the award of tender B/SM73/21 to Securitem. The Municipality opposed the interdict application and Securitem subsequently withdraw the application instituted on or about 31 January 2022.
3. Securitem subsequently on or about 10 March 2022 instituted review proceedings against the Municipality to have the decision of the BAC taken on review to exclude Securitem from Tender B/SM73/21 and set aside and requesting a decision declaring that Securitem as responsive and/or preferred bidder. Securitem alleged that it was tax compliant and that the BAC did not give Securitem sufficient opportunity to provide it with confirmation that its good standing with SARS would be repaired in a short period of time.
4. Securitem is of the view that the decision to exclude it was made on a spurious basis in that it was not in "good standing" with the South African Revenue Services ("SARS") or had failed to provide evidence of its good standing. This allegation by Securitem is denied by the Municipality as Securitem failed/neglected to provide within the 7 day period proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their outstanding tax obligations. Securitem indicated that the cost be borne by the Municipality and such other respondents to the matter as may oppose the relief sought by Securitem.
5. The Municipality have also already appointed a service provider, i.e Mafoko, for the Security services and Mafoko is already rendering the services to the Municipality.
6. In light of the aforesaid, the municipality needs to appoint an attorney firm to act on our behalf in the review application. As STBB has dealt with all the previous cases successfully and any other firm will have to familiarise themselves with the case which will cost the municipality additional money it is more practical to appoint STBB Attorneys needs to oppose the review application instituted by Securitem.

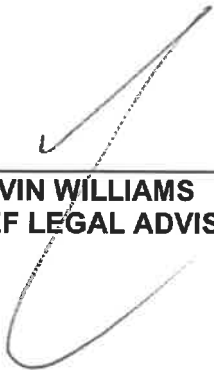
5. FINANCIAL IMPLICATIONS

STBB Attorneys indicated that they will attend to the matter for an approximate amount of R300 000.00 exclusive of VAT. This also include the cost of an advocate to be appointed to attend to the matter. The amount indicated here is market related.

6. RECOMMENDATION

It is recommended that:

1. STBB Attorneys be appointed to oppose the review application 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: 8/4/2022

TO APPOINT AN ATTORNEY'S FIRM TO OPPOSE, ON BEHALF OF THE MUNICIPALITY, THE REVIEW APPLICATION INSTITUTED BY SECURITEM (PTY) LTD ("SECURITEM") AGAINST STELLENBOSCH MUNICIPALITY AND OTHERS. THE REVIEW IS IN RELATION TO THE DECISION OF THE BID ADJUDICATION COMMITTEE TAKEN ON OR ABOUT 28 JANUARY 2022 TO REGARD THEIR TENDER AS NON-RESPONSIVE AND TO EXCLUDE SECURITEM'S BID

Name	Signature	Date
D. BEERWINKEL		8/4/2022
D. Louw	online	8/4/2022
A. Barnes	Online	8/4/2022
A. de Beer	Online	8/4/2022
G. Boshoff	Online	8/4/2022

Comments:

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CHAIRPERSON.....

DATE 8/4/2022

RECOMMENDATION FROM BID ADJUDICATION COMMITTEE APPROVED BY THE ACCOUNTING OFFICER

Name	Signature	Date
Gerda de Wet		8/4/2022