

Decision of the European Ombudsman in case 1035/2020/NH on the European External Action Service's decision not to award a contract for security services for an EU Delegation to an African country

Decision

Case 1035/2020/NH - **Opened on** 06/07/2020 - **Decision on** 06/07/2020 - **Institution concerned** European External Action Service (No maladministration found) |

Dear Sir or Madam,

On 15 June 2020, you submitted a complaint to the European Ombudsman against the European External Action Service (EEAS) concerning its decision not to award a contract for security services for an EU Delegation to the company you represent.

In your complaint, you argue that the EEAS wrongly rejected the bid submitted by your company in response to the call for tenders. You put forward the following supporting arguments:

1. After the submission of its bid, your company asked for the possibility to meet the selection committee, and the Delegation confirmed that you would soon receive a date and time for the meeting. You argue that the Delegation failed to organise the meeting.
2. You argue that the Delegation rejected the bid by your company without asking you to provide clarifications or further information on certain elements in the bid. You argue that the Delegation should have sought clarifications and further information, as laid down in the tender specifications and two other documents.
3. You claim that your company has a vast experience in providing security services to companies, multinationals and diplomatic bodies, and that it is the market leader in security in your country.
4. The financial offer of the successful consortium was 50% higher than the market price and the financial offer of your company.
5. You believe that the Delegation's evaluation grids for the bids of the successful consortium and of your company are subjective and not at all based on technical considerations. You argue



that the EEAS' comments on the successful bid are suspiciously laudatory.

6. According to you, the successful consortium passed the first pre-selection phase without respecting the key requirement of having references in the diplomatic sector.

7. You argue that the consortium that won the contract consists of two companies, one of which is not present on the territory of your country, nor on the European continent, and indicates "cleaning services" as a core business.

As regards your supporting arguments 6 and 7:

I am sorry to have to tell you that, for the reasons set out below, the Ombudsman is unable to deal with the supporting arguments 6 and 7 in your complaint.

The Ombudsman must follow certain rules for dealing with complaints. [1] One of these rules [2] is that the complainant must first have brought the concerns to the attention of the EU body concerned, before complaining to the Ombudsman.

It appears from the information in your complaint that you have not put forward these arguments to the EEAS before submitting your complaint to the Ombudsman.

Unfortunately, this means that the Ombudsman cannot deal with these aspects of your complaint.

As regards your supporting arguments 1 to 5:

You argue that the Delegation agreed to meet with your company for a presentation of its bid, but then never offered a date and time for such meeting. Unfortunately, in the absence of any written proof of the Delegation's agreement, we do not find grounds to inquire into this aspect of your complaint.

You also argue that the Delegation should have asked your company for clarifications regarding the bid. In your complaint, you list three documents which, according to you, provide that the Delegation has to contact the tenderers to obtain further clarifications:

1. The letter inviting you to submit your bid, sent by the Delegation on 22 October 2019 (Ref. Ares(2019)6527096): "*After the opening of the bids: If it is a question of correcting obvious clerical errors in the drafting of the bid or requesting confirmation of a specific or technical element, the contracting authority will contact the tenderer provided that this does not entail any substantial change in the terms of the bid submitted*";

2. The "Invitation to participate", which sets out, under point 7: "*If a document essential for the evaluation is missing from the request to participate or clarification is required, the contracting authority may contact the candidate*";



3. The “Tender specifications”, which provide, under point 3, that the contracting authority may negotiate the offers to improve their content.

The “Invitation to participate” and the “Tender specifications” contain the word “may”. They do not, therefore, oblige the Delegation to contact tenderers for further clarifications. The letter through which the Delegation invited you to submit the bid makes it clear that the Delegation will contact tenderers only in case of clerical errors or in need of confirmation of specific technical elements. This situation does not seem to be applicable to the technical offer by your company, which appeared to be lacking a lot of required information: the bid failed to answer several questions and to provide the required photos for criterion 5. The Delegation said that, based on the low scores given to the bid submitted by your company, it did not find it necessary to request any clarification. We find this position reasonable.

You also argue that your company is the market leader in security services in your country, and that it has vast experience with diplomatic actors. We do not consider this argument, on its own, to constitute evidence that the procedure was flawed. Point 6.2 of the Tender specifications lays down that the technical quality of the bids shall be assessed on the basis of the offers submitted by the tenderers. The assessment cannot be based on reputation or other information not included in the bid.

You also put forward as problematic that the successful financial offer was 50% higher than the market price (and your company’s offer). The Delegation said that the contract had been awarded on a “best price-quality” ratio, as laid down in the tender documents (point 6.1 of the Tender specifications). We find nothing in your complaint to indicate that the Delegation breached its obligation to award the contract to the tenderer offering the best value for money.

Finally, you argue that the evaluation grids for both your company’s bid and the successful bid are subjective and not at all based on technical considerations. According to you, the comments in the evaluation grid for the successful company are suspiciously laudatory. Based on the information provided in your complaint, we find nothing to suggest that the Delegation evaluated the bids in an unfair manner. In particular, we note that you do not challenge the Delegation’s evaluation of your company’s bid as such: you recognise that some parts of the bid might have required more clarity. In that regard, we find no grounds to inquire further into this aspect.

It is regrettable if you understood the procedure to allow for information to be provided at a later stage. This is not how tender procedures work in the EU administration. In order to ensure equal treatment of all tenderers, the bids cannot be substantially modified or completed after the deadline for submission.

On the basis of the above, the Ombudsman finds no indication of maladministration by the EEAS. The Ombudsman has thus closed the case. [3]

I realise that you may be disappointed by this decision, but I hope that the above explanations are nevertheless helpful.



Yours sincerely,

Tina Nilsson Head of Inquiries - Unit 4

Strasbourg, 06/07/2020

[1] These are set out in the Treaty on the Functioning of the European Union and in the Statute of the European Ombudsman.

[2] Set out in Article 2(4) of the Statute of the European Ombudsman.

[3] Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707> [Link].