

Decision on how the EU Capacity Building Mission (EUCAP) in Somalia dealt with a procurement procedure for the provision of private security services (case 717/2022/LM)

Decision

Case 717/2022/LM - Opened on 26/04/2022 - Decision on 30/11/2022 - Institution concerned European External Action Service (No further inquiries justified) |

The case concerned a procurement procedure organised by the EU Capacity Building Mission (EUCAP) in Somalia. The complainant submitted an 'expression of interest' to participate in the procurement procedure, and subsequently followed up with e-mails, but did not receive a reply from EUCAP Somalia.

From the documentation provided in the complaint, it would seem that the complainant sent its expression of interest and subsequent e-mails to the e-mail address indicated in the notice for the procedure. However, EUCAP Somalia claims that it never received the expression of interest, even after subsequent verification. It therefore appears that the electronic system used for submitting documents, via a functional mailbox, was not fit-for-purpose, as it failed to ensure that the complainant's application was correctly received and stored.

It is not possible for the Ombudsman at this remove to assess what kind of technical problem occurred in this case. However, the Ombudsman urges EUCAP Somalia to carefully review the matter to identify the issue and, if it finds a problem with its current system, to put in place an electronic system for future procurement procedures that complies with the requirements in the EU Financial Regulation, concerning the authentication of bidders and the receipt of documents.

Background to the complaint

1. The European Union Capacity Building Mission in Somalia (EUCAP Somalia) [1] is an EU civilian crisis management mission that contributes to the establishment and capacity building of maritime civilian law enforcement capability in Somalia.

2. In summer 2021, EUCAP Somalia launched a procurement procedure for the provision of private security services for EUCAP Somalia staff. [2] The indicative budget for the contract was EUR 10 500 000. The procedure was organised in two phases: in the first phase, potential



contractors could express interest to participate in the call for tenders by 31 August 2021 at the latest. In the second phase, EUCAP Somalia invited contractors that met certain criteria to submit a full tender.

3. On 29 August 2021, the complainant, a security company, submitted an expression of interest to EUCAP Somalia but did not receive any reply. On 26 October 2021, 19 January 2022 and 7 February 2022, it sent follow up e-mails to inquire about the status of its application but still did not receive any reply. Dissatisfied, the complainant turned to the Ombudsman.

The inquiry

4. The Ombudsman asked EUCAP Somalia to provide a written reply on:

(a) why it had not replied to the complainant; and

(b) the legal basis for organising a negotiated procedure in two phases instead of an open call for tenders, which would enable broader competition.

5. In the course of the inquiry, the Ombudsman received the reply of EUCAP Somalia on the complaint and, subsequently, the comments of the complainant in response to EUCAP Somalia's reply.

Arguments presented to the Ombudsman

6. The complainant said that it had learnt that the procedure had been closed and the contract awarded to the incumbent contractor. However, the results of the procedure had not been published on E-tendering (the online portal for managing calls from tenders from the EU institutions) or on EUCAP Somalia's website. The complainant contended that EUCAP Somalia should have communicated the results of the procedure to the tenderers and should have published the award notice in the appropriate forums.

7. EUCAP Somalia confirmed that the contract had been awarded at the end of November 2021. However, it said that it had searched its servers but had not found any expression of interest from the complainant.

8. EUCAP Somalia said that it had used the 'negotiated procedure', and had not published the contract notice, due to the emergency/crisis situation in Somalia. [3] The Commission had authorised EUCAP Somalia to use such procedure for a limited period of time due to the high security risks associated with the situation in Somalia [4] .

9. The complainant contended that it sent the e-mail to the correct e-mail address and within the prescribed deadline. It found it difficult to understand how EUCAP Somalia did not receive its e-mails.



The Ombudsman's assessment

10. According to the EU Financial Regulation, electronic systems used for submitting documents in the context of procurement procedures must be designed to ensure that the bidder can be authenticated with certainty and that the exact time and date documents are received can be determined precisely. [5]

11. From the documentation provided in the complaint, it would seem that the complainant sent its expression of interest and subsequent e-mails to the e-mail address indicated in the notice for the procedure. However, EUCAP Somalia claims that it never received the expression of interest, even after subsequent verification. It therefore appears that the electronic system used for submitting documents, via a functional mailbox, was not fit-for-purpose, as it failed to ensure that the complainant's application was correctly received and stored.

12. It is not possible for the Ombudsman at this remove to assess what kind of technical problem occurred in this case. However, the Ombudsman urges EUCAP Somalia to carefully review the matter to identify the issue and, if it finds a problem with its current system, to put in place an electronic system for future procurement procedures that complies with the requirements in the EU Financial Regulation, concerning the authentication of bidders and the receipt of documents. The Ombudsman will make a suggestion for improvement in this regard.

13. It appears that EUCAP Somalia has not replied to the e-mails by which the complainant asked to be updated about the status of the procedure. If EUCAP Somalia had replied to those e-mails, this could have allowed to clarify the issue earlier. It is a good administrative practice to reply to e-mails by external stakeholders, unless they are abusive or repetitive.

14. Concerning the use of a negotiated procedure, the Commission has established that the crisis situation in Somalia justified, for a limited period of time, the use of procurement procedures that are more flexible than open calls for tenders. This explanation appears reasonable. The Ombudsman also notes that EUCAP Somalia has published the award notice on its website. She trusts that EUCAP Somalia will start to publish consistently the results of procurement procedures on E-tendering, when required by the Financial Regulation.

15. On the basis of the above, the Ombudsman finds that no further inquiries are justified in this case.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

No further inquiries are justified.



The complainant and EUCAP Somalia will be informed of this decision .

Suggestion for improvement

EUCAP Somalia should verify if there are issues with the electronic system it uses for the submission of documents in procurement procedures. If it identifies any issues with its current system, it should put in place a system that ensures that documents submitted by bidders are correctly received and authenticated in accordance with the requirements in the EU Financial Regulation.

Emily O'Reilly European Ombudsman

Strasbourg, 30/11/2022

[1] EUCAP Somalia is an EU civilian crisis management mission that operates in a third country. It is established by the Council of the European Union.

[2] Private Security Services Somalia (Federal Republic of Somalia, incl. Puntland State of Somalia), ref. PROC_ECS_2021_056, the contract notice is available at

https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.eucap-som.eu%2Fwp-content%2Fuploads%2F2021%2F05%2FPROC_ECS_2021_056.pdf
[Link]

[3] In accordance with Point 11.1 of Annex I to the EU Financial Regulation.

[4] Point 39.2 of Annex I of the Financial Regulation states that “ *operations carried out in a crisis shall be considered to satisfy the test of extreme urgency*”.

[5] Article 149 of the Financial Regulation.